

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

World Association of Icehockey Players
Unions North America Division, et al.,

Plaintiffs,

v.

National Hockey League, et al.,

Defendants.

Case No. 2:24-CV-2135-TL

**PLAINTIFFS' CONSOLIDATED
MEMORANDUM OF LAW IN
OPPOSITION TO CHL AND NHL
DEFENDANTS' MOTIONS TO DISMISS**

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1 Plaintiffs World Association of Icehockey Players Unions North America Division and
2 World Association of Icehockey Players Unions USA Corporation (“WAIPU Plaintiffs”), along
3 with Tanner Gould and Isaiah DiLaura (collectively with the WAIPU Plaintiffs, “Plaintiffs”),
4 respectfully submit this memorandum of law in opposition to Defendants’ motions to dismiss.
5 Dkt. No. 139 (“MJ Mem.”); Dkt. No. 141 (“NHL Mem.”).

6 INTRODUCTION

7 Plaintiffs allege that the entire top tier of North American hockey conspired to restrain
8 competition in the labor market for prospective and current major junior hockey players’
9 (“Players”) services. At the fulcrum of this conspiracy lies the NHL-CHL Agreement, which ties
10 the National Hockey League (“NHL”) and, through the NHL’s control and dominion over their
11 rosters, the American Hockey League (“AHL”) and the East Coast Hockey League (“ECHL”) to
12 the Western Hockey League (“WHL”), Ontario Hockey League (“OHL”) and the Quebec
13 Maritimes Junior Hockey League (“QMJHL”) (collectively with the OHL and WHL, the “Major
14 Junior Leagues” or “Leagues”).
15

16 Defendants’ conspiracy eliminates Players’ freedom to choose where they will provide
17 their labor and imposes standardized, non-negotiable terms and conditions that govern Players’
18 provision of their hockey services to the Major Junior Clubs (“Clubs”). Defendants accomplish
19 their restraint of competition through a variety of *per se* illegal tactics, including by (i) allocating
20 the North American market by granting an exclusive territory, each comprised of several U.S.
21 states and Canadian provinces, to each Major Junior League, (ii) conducting involuntary drafts
22 within these exclusive territories whereby a Players’ major junior rights are exclusively allocated
23 to his drafting Club, (iii) compelling Players to sign Standard Player Agreements (“SPAs”) that
24 contain non-negotiable provisions governing, for example, the durations of the contracts, the terms
25 by which Players can terminate the contracts, and the compensation that Players will receive for
26
27

1 the provision of their hockey services, as well as exclusive licenses to Players' names, images and
2 likenesses ("NIL"), and (iv) causing the AHL and ECHL to refrain from competing to sign Players.

3 Congress passed the antitrust laws to ensure that markets, including labor markets, remain
4 open and competitive. Defendants' conspiracy is a textbook example of why Congress chose to
5 act—to prevent the few from exploiting the economic rights of the many. Defendants' exploitative
6 conduct has manifested itself in the horrific abuse of Players, destroying the lives of countless boys
7 who want nothing more than to chase the dream of playing in the NHL. Plaintiffs do not seek
8 recompense for those injuries here: Defendants will have to answer for them in another court on
9 another day. But in this Court, Defendants should have to answer for their anticompetitive actions
10 that made that abuse possible—their restraint of Players' freedom of movement, which compelled
11 Players to make a choice that no child should have to make—between the exploitation of their
12 labor and abandoning their dreams.

14 Defendants' motions do not address the substance of Plaintiffs' claims. Defendants only
15 argue that the Court should decline to adjudicate these claims, which it could only do by ignoring
16 the integrated transnational nature of Defendants' conspiracy and its domestic impact. The Court
17 should reject these arguments for the following reasons:

19 *First*, this Court may assert personal jurisdiction over each Defendant because the well-
20 pleaded allegations make out a *prima facie* case that the Major Junior Defendants have minimum
21 contacts with the United States, which is the relevant forum for these antitrust claims. The Major
22 Junior Defendants' unlawful market allocation scheme covers all fifty states for a simple reason:
23 the United States is an important part of a unified North American labor market for Players'
24 services from which Defendants source and retain Players pursuant to their unlawful market
25 agreements. Every Club, including those in the QMJHL, scouts, recruits, and drafts Players in the
26

1 United States. Dkt. No. 1 (“Compl.”) ¶¶ 8-9, 84-146, 174-176, 266, 280-281, 283. But for
2 Defendants’ conspiracy, Clubs operating on both sides of the 49th parallel would be competing
3 for Players’ services across all fifty states. The Complaint further details how the Leagues and
4 their constituent Clubs also exploit Players’ labor to earn significant revenues from American
5 consumers. This Court may assert personal jurisdiction over the NHL because the NHL has
6 substantial and jurisdictionally relevant contacts with this District (where the Seattle Kraken and
7 several WHL Clubs operate). Plaintiffs’ allegations show that the NHL—in part through the
8 Kraken—has extensive contacts with the forum, including through its participation in the unlawful
9 agreements that harmed Players in the United States and this District.
10

11 *Second*, the FTAIA does not immunize Defendants’ anticompetitive conduct. That statute
12 only exempts “wholly foreign” conduct and transactions from the Sherman Act; however, the
13 relevant anticompetitive conduct and transactions pleaded here are directed at and performed
14 across each of the Leagues’ exclusive, transnational territories, and the effects of Defendants’
15 anticompetitive conduct is felt here. Defendants’ conspiracy includes U.S.-based entities that have
16 agreed to refrain from competing for Players in Canada and the United States, and further restricts
17 the ability of both American and Canadian Players to compete for employment in the United States.
18 Moreover, both American and Canadian Players drafted by NHL clubs suffer additional antitrust
19 injuries as a result of the NHL’s (and its clubs’) participation in the conspiracy, including when
20 NHL clubs (including U.S.-based clubs) return those Players to their former Major Junior Clubs if
21 they fail to make their NHL clubs’ opening day rosters, or when the NHL’s minor league affiliates
22 in the AHL or ECHL (all of which are based in the United States) refuse to compete for their
23 services.
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1 Defendants seek to draw analogies to *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542
2 U.S. 155 (2004), but that case was decided on materially different facts. *Empagran* involved
3 damage claims pursued by international victims of foreign price-fixing activity where the conduct
4 giving rise to the plaintiffs' antitrust injuries took place abroad. *Id.* at 158. Here, by contrast,
5 every Player suffered antitrust injury in the United States due to, among other things, the U.S.-
6 based Clubs' agreement not to compete for (a) any Player who resided in a territory exclusively
7 allocated to a different League, and (b) any Player on a different Club's protected list, as well as
8 by the NHL's agreement that its AHL and ECHL affiliated clubs would not compete for Players.
9 *Empagran* held only that the FTAIA bars damage claims where the plaintiff's claim rests solely
10 on an "*independent* foreign effect giving rise to the claim." *Id.* at 159. But for Defendants'
11 conspiracy, a competitive market would have existed in which *all* U.S.- and Canadian-based Clubs
12 (including all AHL and ECHL clubs) would have competed for the services of *all* Players.
13

14 *Third*, the NHL-specific arguments also fail, as they rest on a patently false misreading of
15 the Complaint—that the sole basis for Plaintiffs' claims against the NHL is a single provision in
16 the NHL-CHL Agreement. In fact, Plaintiffs challenge *multiple* provisions of that Agreement and
17 further allege that the NHL and its constituent clubs participate in the conspiracy through their
18 efforts to prevent their AHL and ECHL affiliates from competing for Players' services. These
19 restraints (which the NHL's motion ignores) also provide Plaintiffs Tanner Gould and Isaiah
20 DiLaura Article III and antitrust standing against the NHL.
21

22 *Finally*, the non-statutory labor exemption does not protect any of the NHL's challenged
23 conduct. The NHL's argument relies on documents outside the four corners of Plaintiffs'
24 Complaint—in particular, the collective bargaining agreement ("CBA") between the NHL and the
25 National Hockey League Players Association ("NHLPA"), the exclusive bargaining representative
26
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1 of its players' union—a document that may not be considered under Rule 12(b)(6). For that
2 procedural defect alone, the NHL's non-statutory exemption argument should be rejected.

3 Moreover, even if the Court *could* consider that CBA and other facts raised by Defendants
4 that go beyond the pleadings under Rule 12(b)(6), the non-statutory exemption would still not
5 provide a defense for the following reasons: (1) the NHL–NHLPA CBA could not shield from
6 antitrust scrutiny the NHL's agreement to prohibit competition with the Major Junior Defendants
7 by its minor league affiliates—an agreement the NHL does not contend has any basis in the CBA
8 or the NHL–CHL Agreement; (2) the challenged restraints do not primarily affect the terms and
9 conditions of employment of *NHL players*, the only hockey players whose union is party to the
10 NHL–NHLPA CBA; and (3) the NHL cannot demonstrate as a matter of law that the challenged
11 restraints are the product of bona fide, arms-length bargaining between the NHL and the NHLPA.
12 To the contrary, those restraints are directed at *Major Junior Players*, who operate in an entirely
13 separate labor market, who have either *never entered* or subsequently *departed from* the NHL, and
14 whose interests are not represented in any collective bargaining between the NHL and the NHLPA.
15 Consequently, any labor exemption flowing from the NHL–NHLPA CBA cannot possibly
16 immunize these restraints.
17
18

19 The motions to dismiss should be denied.

20 **BACKGROUND**

21 **I. THE PARTIES**

22 **A. Plaintiffs**

23 **1. WAIPU Plaintiffs**

24 WAIPU Plaintiffs are membership organizations that represent the interests of current and
25 prospective North American Major Junior Hockey Players. Compl. ¶¶ 57-70. During the relevant
26 period, WAIPU Plaintiffs have had Players in all three Major Junior Leagues as members,
27

1 including American and non-American Players who play Major Junior hockey in the United States.
2 *Id.* WAIPU Plaintiffs have never been certified as the bargaining representative of any of their
3 members, or any other professional hockey players, and have never collectively bargained with
4 any Defendant on any Player's behalf.

5 2. Individual Plaintiffs

6 Isaiah DiLaura is an American citizen who was born and raised in Lakeville, Minnesota.
7 DiLaura was first recruited at age 13 by scouts for WHL Clubs, but none from the OHL or QMJHL.
8 *Id.* ¶ 77. The Prince George Cougars drafted him at age 15. *Id.* After DiLaura declined to sign
9 an SPA, the Cougars placed him on its protected list, which prevented him from shopping his
10 services to other clubs. *Id.* ¶ 78. DiLaura did not want to play for Prince George, which is located
11 in a remote area of British Columbia. *Id.* ¶ 77. Indeed, many OHL Clubs are located closer to
12 DiLaura's hometown than the Prince George Club. DiLaura was ultimately persuaded to play for
13 Prince George when he was promised the starting goalie position and to be treated as a professional
14 athlete, with all the glitz and glamour of fans, and playing games in big arenas before large crowds.
15 *Id.* ¶ 78. In light of these promises, DiLaura signed an SPA while attending a Prince George
16 training camp at age 17 without his parents or other adult present to advise him. *Id.* Prince George
17 promptly reneged on nearly all of these promises, save for one: he *was* treated as a professional by
18 being benched for complaining about those broken promises and then traded, first from Prince
19 George to the Portland (Oregon) Winterhawks and then to the Swift Current Broncos in
20 Saskatchewan. *Id.* ¶ 79. DiLaura was not asked to consent to the trades and was given less than
21 24 hours' notice to join his new Club. *Id.*

22 Before being drafted, DiLaura was harmed by Defendants' conspiracy because his
23 residence in WHL territory prevented Clubs outside the WHL from competing for his services.
24 Thus, DiLaura could not have sold his services to any Club in the OHL, no matter how much any

1 Club in that League might have wanted to sign him. DiLaura was also harmed the moment he was
2 subject to the WHL draft because the draft restrained competition among WHL Clubs for his
3 services. For example, the Spokane Chiefs could not hire DiLaura. Finally, DiLaura was harmed
4 when he signed a WHL SPA, which bound him to play exclusively for, and made him the property
5 of, Prince George (and the Clubs to which he would subsequently be traded) for the entirety of his
6 Major Junior career. DiLaura's harms are representative of the harms suffered by the class
7 DiLaura seeks to represent.
8

9 Tanner Gould is a Canadian citizen who was born and raised in Calgary, Canada. *Id.* ¶ 71.
10 By age 14, Gould had already been recruited by several clubs in the WHL, but none from the OHL
11 or QMJHL. *Id.* The Tri-City Americans, located in Kennewick, Washington, drafted him at age
12 15. *Id.* Gould knew that because he was drafted by Tri-City, he could not negotiate with any other
13 Major Junior Club. *Id.* ¶¶ 166, 188. Gould signed an SPA with Tri-City that contained the same
14 non-negotiable terms as DiLaura, as well as a \$500,000 development fee that would need to be
15 paid if Gould ever sought to be released from his contract. *Id.* ¶¶ 72, 75. Gould suffered a back
16 injury toward the end of his first season, which was not properly treated by the Tri-City medical
17 staff. When Gould reported to Tri-City at the start of his second season that his back was still not
18 fully recovered, Tri-City abandoned Gould, trading him to the Prince Albert Raiders where his
19 career languished. *Id.* ¶¶ 74, 248-250. Although Gould's SPA provided that he could withhold
20 his consent to be traded, Tri-City's management informed Gould that if he did so, Tri-City would
21 ensure that he would never play organized hockey anywhere until he served out the remainder of
22 his contract on Tri-City's inactive list. *Id.* ¶¶ 74, 250. Forced to choose between a trade he did
23 not want and the end of his hockey career, Gould had no choice but to consent.
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Before being drafted, Gould was harmed by Defendants' conspiracy because his residence in WHL territory prevented Clubs outside the WHL from competing for his services. Gould could not have sold his services to any U.S.-based Club in the OHL or QMJHL, no matter how much any Club in those Leagues might have wanted to sign him. Gould was also harmed the moment he was subject to the WHL draft because the draft restrained competition among WHL Clubs for Gould's services. Thus, the draft impaired his ability to sell his services in the U.S. labor market, including to any of the other U.S.-based Clubs in the WHL. Finally, Gould was harmed when he signed a WHL SPA, which bound him to play exclusively for, and made him the property of the Tri-City Americans (and the Clubs to which he would subsequently be traded) for the entirety of his Major Junior career. Gould's harms are representative of the harms suffered by the class of Players Gould seeks to represent. Gould's harms also demonstrate why Defendants' FTAIA arguments are inapplicable to Canadian Players who ultimately play for Canada-based Clubs.

B. Defendants

1. The Major Junior Defendants

i. The CHL

The CHL is "not a sports league." *Id.* ¶¶ 2, 153. It has no teams or organized regular-season game schedules. *Id.* ¶¶ 4-5. No cooperation among the Leagues is necessary to offer major junior hockey to the public. *Id.* As the CHL President admitted under oath: "The CHL and the Leagues are separate entities. There is no parent-subsidary relationship between them. The CHL has no role in hockey operations for the Leagues, nor has it ever had any material control over" the three independent Leagues. *Id.* ¶ 2.

ii. The Major Junior Leagues and their Clubs

The Major Junior Leagues are separate legal entities, with their respective teams operating "independently from one another." *Id.* ¶¶ 3, 85-146, 155-156. The Leagues include nine Clubs

1 that operate in the United States, of which six are in the WHL (and three operate in Washington),
2 and three are in the OHL. Each league is “independently responsible” for “scheduling, organizing,
3 and operating games,” “establishing playing rules,” “organizing player drafts for new players,”
4 and “providing direction regarding player agreements.” *Id.* ¶ 3.

5 The Major Junior Defendants communicate and “collaborate” with each other through the
6 CHL’s executive council, which is comprised of the commissioners from each of the WHL, OHL,
7 and QMJHL. *Id.* ¶ 157. This “collaboration” includes collusion on “player benefits” to provide
8 “a consistent approach” for Players. *Id.* ¶ 158.

9 Clubs in each League have the exclusive right to scout, recruit, draft, and sign Players who
10 reside in a U.S. state or Canadian province allocated to their respective League. *Id.* ¶¶ 8-9, 11, 22,
11 24, 53, 71, 77, 166, 168-170, 174-176, 180-183, 280-281. All Clubs, either directly or collectively
12 through their Leagues, scout Players in their allocated U.S. states, conduct training camps in their
13 allocated U.S. states, draft Players who reside in their allocated U.S. states, and sign such Players
14 to SPAs. *Id.* ¶¶ 84-146, 174-176, 180-183, 280-281. Conversely, all Clubs refrain from scouting
15 Players in U.S. states allocated to one of the other Leagues, and do not compete to sign Players
16 who reside in those states. *Id.* ¶¶ 174-176, 180-183. All Players in the WHL and OHL play games
17 against rivals in the United States, while Players in the QMJHL must be prepared to play in the
18 United States when the Memorial Cup is played here. *See, e.g., id.* ¶¶ 153, 280-281, 286; MJ
19 Mem. 17 n.1.

22 2. The NHL

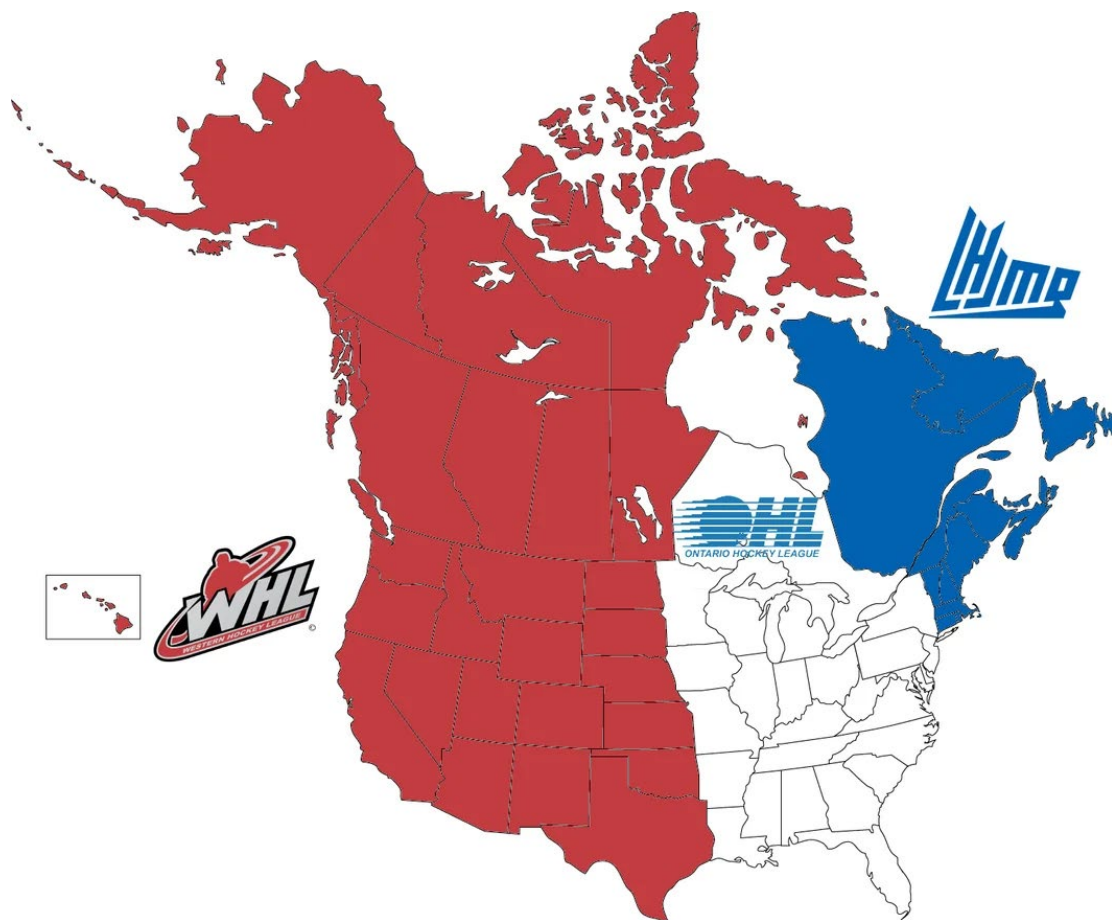
23 The NHL is an unincorporated joint venture association that operates in the United States
24 and Canada through, and for, 32 member Clubs (the “NHL Clubs”), including the Kraken, that
25 collectively have annual revenues of approximately \$6 billion. *Id.* ¶ 82. The NHL Clubs each
26 have minor-league affiliates in the AHL and ECHL. *Id.* ¶¶ 37-39, 268. Nearly all AHL and ECHL
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1 clubs are owned by or affiliated with NHL Clubs, and all AHL and ECHL clubs operate in the
2 United States. *Id.* The NHL “transacts business in the Western District of Washington by
3 engaging in activities there relating to the business of professional ice hockey.” Answer ¶ 4, *Smack*
4 *Apparel Co. v. Seattle Hockey Partners, LLC*, No. 22-CV-44 (W.D. Wash. Mar. 31, 2022), Dkt.
5 No. 16.

6 **II. THE UNLAWFUL SCHEME**

7
8 Plaintiffs have plausibly alleged that Defendants have engaged in a single conspiracy on
9 both sides of the 49th parallel to restrain competition in the labor market for Player services.
10 Compl. ¶¶ 1, 6, 17, 24, 36, 46, 63, 166-167, 198.

11 The Major Junior Defendants have allocated among themselves exclusive territories across
12 North America from which they may recruit, source, and draft Players. *Id.* ¶¶ 8-9, 11, 22, 24, 53,
13 71, 77, 170-183. Pursuant to this agreement, Clubs have restricted their scouting, recruiting, and
14 signing of Players who reside within their exclusive territory, and have refrained from doing so
15 regarding Players who reside outside their allocated territory. *Id.* As described by one Canadian
16 court, “Each of the CHL leagues has a strictly defined geographic territory over which *it owns* the
17 rights of all junior-aged players, who range in age from 16 to 20.” *Id.* ¶ 171 (emphasis added).
18 For example, this unlawful agreement allocates all Players who reside in Washington State to the
19 WHL. *Id.* ¶¶ 174, 177. The map below details Defendants’ market allocation as alleged.
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Thus, for example, Defendants have agreed that only the WHL can recruit, source and draft Players residing in Washington State and that the QMJHL and the OHL will not compete for the services of such Players. *Id.* ¶¶ 174-177. Every U.S. state is similarly allocated to one of the three Leagues. *Id.* ¶¶ 174-178. The Leagues include nine U.S.-based Clubs that have agreed not to compete for Players outside of their Leagues’ “protected” territories. *Id.* ¶ 281. Defendants’ North American-wide agreement not to compete is a *per se* illegal market allocation. *See, e.g., Duffy v. Yardi Systems, Inc.*, No. 23-CV-1391, 2024 WL 4980771, at *7 (W.D. Wash. Dec. 4, 2024) (“Horizontal price fixing and market allocation are *per se* Section 1 violations.” (quoting *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 479 (9th Cir. 2021))). In the absence of this market allocation, Players would be able to negotiate with multiple Clubs across the three Leagues and Clubs would be forced to compete for Players’ services by offering better terms and conditions.

1 Each year, the Leagues conduct player drafts as they agreed to do pursuant to the terms of
2 the CHL Constitution. *Id.* ¶¶ 166, 187-199. Unlike other player drafts, these League drafts are
3 “involuntary,” *i.e.*, Players do not apply to participate in the draft. *Id.* Clubs simply draft Players
4 who happen to reside in their League’s protected territory when they age-qualify and then, pursuant
5 to the unlawful scheme, own those Players’ rights through age 20—even if the Player chooses not
6 to sign an SPA. *Id.* These drafts also differ from other player drafts in that they are not the product
7 of a CBA, ignoring an unbroken line of precedent regarding player rights dating back to the 1970s.
8 *Id.* ¶ 192. Defendants’ drafts are all about control of the market; for this reason, the Major Junior
9 Defendants have agreed to draft far more Players than they need to fill their rosters. *Id.* ¶ 197.
10 Indeed, once drafted, all Clubs other than the Player’s drafting Club have agreed to refrain from
11 competing for that Player’s services. *Id.* ¶¶ 196, 210. Player drafts are another form of unlawful
12 market allocation because they eliminate competition for players’ services. *See, e.g., Robertson*
13 *v. Nat’l Basketball Ass’n*, 389 F. Supp. 867, 893 (S.D.N.Y. 1975) (finding that player drafts are
14 “readily susceptible to condemnation,” either as a group boycott or as “illegal horizontal territorial
15 allocations and product market divisions”). In the absence of a draft, Players would be able to
16 negotiate with multiple Clubs across all three Leagues, and Clubs would be forced to compete for
17 Players’ services by offering better terms and conditions.

20 Once drafted, the Major Junior Defendants have further agreed that they can place Players
21 on “protected lists” that ensures that no other Club will compete for their services. *Id.* ¶¶ 196, 206-
22 210, 220. Clubs use these protected lists to prevent unsigned Players from playing elsewhere, as
23 well as to discipline uncooperative Players who, for example, decline to accede to trades or who
24 otherwise protest the unlawful *status quo*. *Id.* ¶¶ 53, 77, 200-201, 206-210.

1 Having restrained competition for Player services through the conduct described above,
2 the Major Junior Defendants exploit that restraint by presenting Players with agreed-upon, non-
3 negotiable terms in “standard” SPAs that, among other things, fix Player compensation below
4 competitive levels and which seize each Player’s NIL rights. *Id.* ¶¶ 75, 201-204, 224-225, 227-
5 229, 231. These price-fixed wages result in pay far below the levels of other developmental hockey
6 leagues, such as the ECHL and AHL. *Id.* ¶ 229. For example, Players are paid a “stipend” of just
7 \$250 per month in the WHL, whereas players in the ECHL earn on average over \$2,800 per month,
8 and players in the AHL earn on average over \$5,000 per month. *Id.* ¶¶ 228-229. Defendants have
9 further agreed that the term of each Player’s SPA shall cover his entire major junior career, and
10 provide that while Clubs may trade Players or refuse to play them for any reason, Players may not
11 terminate their SPAs to play organized hockey anywhere else in the world until they age out of
12 major junior hockey or they (or their new Clubs) pay steep player development fees, which can be
13 as much as \$500,000. *Id.* ¶¶ 17, 221. These terms also preclude Players from playing in the NCAA
14 until they age out of major junior hockey. *Id.* ¶ 219.

17 A drafted Player has no choice but to accept the SPA’s terms because Defendants’
18 agreements prevent any other Club from competing for that Player’s services. *Id.* ¶¶ 196, 210.
19 Thus, in addition to being the consequence of Defendants’ agreement to eliminate competition for
20 Player services through the market allocation scheme and player drafts discussed above, these
21 provisions of the SPAs also constitute horizontal price-fixing. *See, e.g., In re High-Tech Employee*
22 *Antitrust Litig.*, 856 F. Supp. 2d 1103, 1117 (N.D. Cal. 2012) (finding agreement among employers
23 to suppress compensation and restrict employees’ mobility stated per se claim); *In re Animation*
24 *Workers Antitrust Litig.*, 123 F. Supp. 3d 1175, 1182 (N.D. Cal. 2015) (same).

1 The NHL is no mere bystander here: the NHL-CHL Agreement enshrines the NHL's
2 central role in the conspiracy in at least two important ways. *First*, it sets forth the rules governing
3 the transfer or assignment of Players who are drafted by NHL clubs but do not make the NHL
4 club's opening day roster. *Id.* ¶¶ 270-271, 275, 287. Under those rules, any Player who is drafted
5 by an NHL club—but does not make its opening day roster—must be returned to his former Major
6 Junior Club. *Id.* ¶¶ 270-271, 287. Most 18-year-old NHL draftees do not make the opening day
7 roster. As a result, the NHL-CHL Agreement ensures that the conspiracy that binds the Player to
8 his drafting Major Junior Club endures, even after the Player has been drafted by an NHL club.
9 Thus, pursuant to this agreement, the Seattle Kraken are obligated to return Players it drafts that
10 don't make its roster to those Players' former Clubs.¹ Through these actions, the NHL not only
11 prevented these Players from earning substantially more money by competing in the AHL or
12 ECHL, but also subjected these Players to the various anticompetitive agreements discussed above,
13 including the price-fixing provisions of Players' prior SPAs. The NHL's role in this conspiracy is
14 thus memorialized in the NHL-CHL Agreement, which provides the NHL with an inexpensive
15 pool of talent and a cheap place to "park" Players once drafted into the NHL. *See, e.g.,* Alex
16 Dourian, *Two Minutes for Unfair Restraint: How the NHL-CHL Player Transfer Agreement Serves*
17 *as a Catalyst for Abuse of Dominance*, 10 Am. Univ. Bus. L. Rev. 329 (2021).

20 *Second*, pursuant to Defendants' unlawful agreement, the NHL and its constituent clubs
21 have compelled their AHL and ECHL affiliates not to compete for Players "owned" by Major
22 Junior Clubs. *Id.* ¶¶ 272-273. While European hockey players under 20, for example, are eligible
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25 ¹ For example, the Kraken recently assigned their top draft pick in the 2024 NHL draft (and 8th
26 overall pick) to his former WHL Club, the Spokane Chiefs. *See* "Seattle Kraken Reassign Berkly
27 Catton to Spokane," CHL (Sept. 25, 2024), <https://chl.ca/whl-chiefs/article/seattle-kraken-reassign-berkly-catton-to-spokane/>.

1 to (and frequently do) play in the AHL and ECHL, drafted Players subject to the anticompetitive
2 scheme are barred by Defendants’ conspiracy from playing in those leagues *even though* many
3 drafted Players are demonstrably capable of playing in the AHL and ECHL and enriching the
4 quality of play in those leagues. *Id.* ¶¶ 272-274, 278. This was apparent during the pandemic,
5 when Major Junior Hockey was shuttered and Major Junior Players were temporarily given
6 permission to play in the AHL and ECHL, where they thrived. *Id.* ¶ 273. That permission was
7 withdrawn when Major Junior Hockey reopened at the conclusion of the pandemic, reinstating the
8 longstanding agreement of the AHL and ECHL not to compete for Major Junior Players at the
9 behest of the NHL.² *Id.* ¶ 274.

11 COMMON CHL/NHL ARGUMENTS

12 III. THE COURT HAS JURISDICTION OVER ALL DEFENDANTS

13 Under Rule 12(b)(2), Plaintiffs need only make “a *prima facie* showing of jurisdictional
14 facts” and all disputed facts are to be resolved in Plaintiffs’ favor. *Wilson v. PTT, LLC*, 351 F.
15 Supp. 3d 1325, 1331 (W.D. Wash. 2018) (citations omitted). A court may assert personal
16 jurisdiction over a defendant if (1) a statute confers jurisdiction, and (2) the exercise of jurisdiction
17 comports with constitutional due process. *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*,
18 368 F.3d 1174, 1177 (9th Cir. 2004). Because Plaintiffs assert federal antitrust claims, Section 12
19 of the Clayton Act, 15 U.S.C. § 22, provides a statutory basis for jurisdiction. *D’Augusta v. Am.*
20 *Petro. Inst.*, 117 F.4th 1094, 1100 n.1 (9th Cir. 2024) (“We have interpreted Section 12 of the
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23 ² Consider for example, the situation of a Major Junior Player and a European player, both drafted
24 and signed by an NHL club, but who fail to make the roster. The Major Junior Player must be
25 reassigned to his former Club—a world of bus rides and monthly stipends of a few hundred dollars
26 playing against younger and less experienced competition—whereas the European player can join
27 the NHL club’s affiliate AHL or ECHL team with better pay, better competition, and better
treatment. The only difference between the two is the existence of the unlawful restraints. *See*,
e.g., Compl. ¶ 279.

1 Clayton Act (15 U.S.C. § 22) to grant personal jurisdiction over any corporate antitrust defendant
2 with minimum contacts with the nation.” (citing *Action Embroidery*, 386 F.3d at 1180)). In the
3 alternative, to the extent this Court concludes that a defendant is not subject to the Clayton Act,
4 Washington’s long-arm statute, Rev. Code § 4.28.185, provides the statutory basis. Both statutes
5 extend to the limits of constitutional due process. See *Action Embroidery*, 386 F.3d at 1180;
6 *Northrim Bank v. Pearl Bay Seafoods, LLC*, 717 F. Supp. 3d 1026, 1032 (W.D. Wash. 2024).

7
8 Whether the forum is the United States under the Clayton Act or Washington under the
9 Washington long-arm statute, courts in the Ninth Circuit apply a three-part test to determine
10 whether minimum contacts exist: (1) the defendant must “purposefully direct” its activities to the
11 forum or “purposefully avail” itself of the benefits afforded by the forum’s laws; (2) the claim
12 must “arise out of or relate to the defendant’s forum-related activities”; and (3) the exercise of
13 jurisdiction must comport with fair play and substantial justice, *i.e.*, it must be reasonable. *Davis*
14 *v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 1161-62 (9th Cir. 2023).

15
16 Purposeful availment and purposeful direction are distinct concepts. *Davis*, 71 F.4th at
17 1162. Both “ask whether defendants have voluntarily derived some benefit from their interstate
18 activities such that it will not be haled into a jurisdiction solely as a result of random, fortuitous,
19 or attenuated contacts.” *Id.* (citing *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz*
20 *Choloma, S.A.*, 972 F.3d 1101, 1106 (9th Cir. 2020)). While purposeful availment is “typically”
21 used in contract cases and purposeful direction in tort, the Ninth Circuit recently clarified that the
22 law does not “impose a rigid dividing line between these two types of claims.” *Id.* Instead, courts
23 should “comprehensively evaluate the extent of the defendant’s contacts with the forum state,”
24 “which may mean looking at both purposeful availment and purposeful direction.” *Id.* “Arise out
25 of” and “relates to” are also distinct concepts. *Ford Motor Co. v. Montana Eighth Jud. Dist.*, 592

1 U.S. 351, 362 (2021) (holding that the “first half of that standard asks about causation; but the
2 back half, after the ‘or,’ contemplates that some relationships will support jurisdiction without a
3 causal showing”). When considering these first two prongs, “a strong showing on one axis will
4 permit a lesser showing on the other.” *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199,
5 1210 (9th Cir. 2006) (*en banc*). If Plaintiffs meet their burden under the first two elements,
6 Defendants bear the burden to disprove the third. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653
7 F.3d 1066, 1076 (9th Cir. 2011).

8
9 The WHL and all but four OHL clubs (discussed below) correctly concede that they are
10 subject to the Court’s jurisdiction.

11 **A. The Court May Exercise Personal Jurisdiction Over the QMJHL Defendants**

12 The QMJHL is subject to the Court’s jurisdiction because Plaintiffs have made a *prima*
13 *facie* case that the QMJHL and its Clubs purposefully directed their conduct at the United States,
14 rendering the exercise of personal jurisdiction over them reasonable.

15 1. The QMJHL Clubs Purposefully Directed their Activities at the United
16 States

17 In analyzing purposeful direction, the Ninth Circuit applies the effects test derived from
18 *Calder v. Jones*, 465 U.S. 783 (1984). *Doe v. WebGroup Czech, A.S.*, 93 F.4th 442, 452 (9th Cir.
19 2024) (citing *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017)). To
20 satisfy that test, the defendant must have (1) committed an intentional act, (2) expressly aimed at
21 the United States, (3) causing harm that the defendant knows is likely to be suffered in the United
22 States. *Id.* Under the effects test, personal jurisdiction can be asserted over an out-of-state
23 defendant if the effect of the conduct is felt in the forum (here, the United States)—even if the
24 defendant did not establish physical contact with the forum. *Soler v. Cty. of San Diego*, 762 F.
25 App’x 383, 385 (9th Cir. 2019) (“Jurisdiction . . . may not be avoided merely because the defendant
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27

1 did not *physically* enter the forum State.” (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,
2 476 (1985))). Further, the conduct need not be aimed solely at the United States, so long as the
3 United States was within the targeted region. *Yahoo!*, 433 F.3d at 1207 (“[T]he ‘brunt’ of the harm
4 need not be suffered in the forum state.”). In *Shields v. Fédération Internationale de Natation*, for
5 example, the district court found jurisdiction over the Fédération Internationale de Natation
6 (“FINA”) for claims arising out of FINA’s control over international swimming competitions. 419
7 F. Supp. 3d 1188, 1209 (N.D. Cal. 2019). The court rejected FINA’s argument that the plaintiff
8 could not show that the alleged conduct was expressly aimed at the United States because the
9 restraint at issue was a global restriction rather than one that specifically targeted swimming events
10 in the United States. *Id.*

12 All three elements are present here. First, the QMJHL Clubs engaged in intentional acts
13 directed at the United States when they entered into and implemented the challenged agreements.
14 *Schwarzenegger*, 374 F.3d at 806. The Complaint details how the QMJHL Clubs scout and recruit
15 players—including by conducting player development camps—in the United States, while limiting
16 their recruitment, drafting, and signing of Players to the protected territory (New England, in the
17 United States) allocated to them. Compl. ¶¶ 8, 128-146, 280, 175-177, 179, 180, 183, 186, 189,
18 280-281. Like the other Defendants, the QMJHL Clubs also marketed themselves in the United
19 States by entering into licensing agreements with American companies, selling television and
20 streaming rights to United States residents, and selling merchandise and tickets to United States
21 residents. *Id.* ¶¶ 42, 83, 128-146, 266, 283.

24 Finally, the harmful effects of the QMJHL’s conduct and the conduct of its co-conspirators
25 were felt in the United States and in this District. *Id.* ¶ 178, 280-283, 301-302. Per Defendants’
26 agreement, QMJHL Clubs scouted and drafted Players only from its allocated territory, thus
27

1 refusing to compete for the services of Players residing outside of New England, including those
2 Players who reside in Washington. *Id.* ¶¶ 9, 175-177, 179, 180, 183, 186, 189, 199, 280-281. For
3 example, no QMJHL Club scouted or otherwise competed to sign either Gould or DiLaura. *Id.* ¶¶
4 71, 77, 175, 177. Conversely, competition for the services of Players who reside in New England
5 was similarly restrained, as no U.S.-based Club, nor any other OHL or WHL Club, would or will
6 compete for their services. *Id.* ¶¶ 9, 174-175, 180-182. Territorial allocations aside, the QMJHL
7 further harmed U.S. Players by subjecting them to involuntary drafts that restrained competition
8 for their services.³ *Id.* ¶¶ 26, 196-200, 209. These allegations demonstrate foreseeable harm in
9 the United States. *In re Western States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 744
10 (9th Cir. 2013) (plaintiffs alleged actions outside the forum that caused harm inside the forum).

12 Plaintiffs need not show that the “‘brunt’ of the harm” caused by their restraints of trade
13 were suffered in the United States. *Yahoo!*, 433 F.3d at 1207. It is enough that a “jurisdictionally
14 sufficient amount of harm” is suffered in the forum, even if “more harm might have been suffered
15 in another [forum].” *Id.*; *see also Will Co. v. Ka Yeung Lee*, 47 F.4th 917, 926 (9th Cir. 2022)
16 (asserting jurisdiction over foreign defendants who “appealed to and profited from a United States
17 audience, and thus expressly aimed the [product] at the United States”). Courts regularly find
18 personal jurisdiction where foreign defendants participate in agreements that inflate the prices paid
19 by United States residents. *See, e.g., In re Packaged Seafood*, 338 F. Supp. 3d at 1156 (asserting
20 jurisdiction over a United Kingdom limited liability partnership that had an equitable interest in a
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23
24 ³ Consider, for example, a star bantam Player who resides in Boston or Lewiston: any Club in the
25 QMJHL would be willing to pay competitive wages to recruit this Player (but for the collusive
26 agreements). However, because of Defendants’ agreements, no QMJHL Club *actually* competes
27 for his services, and this star Player instead has no choice but to accept the imposition of an SPA
that shackles his freedom of movement and which pays him a mere pittance for his hockey
services.

1 United States packaged seafood producer, reasoning that the partnership had committed intentional
2 acts that could support a finding of purposeful direction toward the forum with respect to an alleged
3 price-fixing conspiracy); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 27 F. Supp. 3d 1002, 1012
4 (N.D. Cal. 2014) (asserting jurisdiction over foreign entity based on evidence that manufacturer
5 participated in agreement to fix CRT prices abroad and in the United States).

6 The QMJHL’s assertion that Plaintiffs failed to allege “purposeful direction” because any
7 harm a player in the QMJHL would suffer would be felt solely in Canada is meritless. As discussed
8 above, the QMJHL, its Clubs, and its co-conspirators all directed their conduct at the United States
9 and caused antitrust injury in the United States.

11 The QMJHL Clubs also purposefully availed themselves of the United States by, *inter alia*,
12 selling broadcasting rights and merchandise into the United States, systematically scouting and
13 recruiting players, agreeing with their U.S.-based counterparts not to encroach on their unlawfully
14 allocated territories, negotiating payments from the NHL to “develop” Players, and agreeing with
15 the NHL teams to be the sole employer for NHL-drafted Players who do not make an NHL club
16 roster. Defendants’ cases (two of which are unpublished appellate rulings) are off-point and
17 certainly cannot be read to stand for some bright-line rule that foreign employers may
18 systematically recruit talent in the forum without purposefully availing themselves of U.S. law.
19 Here, there is that plus much more that show the QMJHL’s contacts were far from random,
20 fortuitous, or attenuated.

22 2. The Claims Arises Out of or Relate to the QMJHL’s Clubs’ Forum-Related
23 Activities

24 Plaintiffs’ claims *arise out of* and *relate to* Defendants’ transnational agreement to restrain
25 competition for Player services by allocating markets and conducting player drafts. *See Shields*,
26 419 F. Supp. 3d at 1209 (finding plaintiffs’ allegations met the “arise out of” requirement by
27

1 alleging a “global antitrust conspiracy that include[d] anticompetitive conduct aimed at preventing
2 [plaintiffs] from holding swimming competitions in the United States” even if some of the activity
3 also took place outside the United States); *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 451
4 (6th Cir. 2012) (finding cause of action “arises from” United States contacts where defendants’
5 conspiracy had an “explicit geographical focus,” including allocation of domestic business to
6 certain defendants).

7 8 3. The Exercise of Jurisdiction is Reasonable

9 To defeat personal jurisdiction, the QMJHL Defendants must present a “compelling case”
10 that “would render jurisdiction ... unreasonable.” *Freestream Aircraft (Berm.) Ltd. v. Aero Law*
11 *Grp.*, 905 F.3d 597, 607 (9th Cir. 2018) (citation omitted); *Zero Cloud One Intelligent Tech.*
12 *(Hangzhou) Co. v. Flying Heliball LLC*, No. 24-CV-1699, 2024 WL 4665594, at *4 (W.D. Wash.
13 Nov. 4, 2024) (“[T]he burden then shifts to the defendant to show jurisdiction is unreasonable
14 under the third prong.” (citing *Picot v. Weston*, 780 F.3d 1206, 1211–1212 (9th Cir. 2015))). They
15 have not met that burden.

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17 In assessing reasonableness, courts look to a number of factors, including: (1) the extent
18 of the defendant’s purposeful injection into the forum’s affairs; (2) the burden on the defendant of
19 defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state;
20 (4) the forum’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the
21 controversy; (6) the importance of the forum to the plaintiff’s interest in convenient and effective
22 relief; and (7) the existence of an alternative forum. *Freestream*, 905 F.3d at 607. A court must
23 balance all of these factors; none is dispositive. *T-Mobile USA, Inc. v. Auto-Owners Ins. Co.*, No.
24 20-CV-567, 2020 WL 4788021, at *5 (W.D. Wash. Aug. 18, 2020) (citing *CollegeSource*, 653
25 F.3d at 1079).
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1 The QMJHL Defendants argue that asserting jurisdiction over them would be unreasonable
2 because the “key events” alleged in the Complaint occurred in Canada, the “more efficient” forum
3 is Canada, and the QMJHL should not be made to answer for its antitrust violations in the United
4 States. None of these arguments are persuasive. Rather, the exercise of jurisdiction is reasonable,
5 based on the allegations in the Complaint, because, *inter alia*, (1) the QMJHL bargained for and
6 its Clubs regularly exercise their exclusive right to recruit Players from a substantial portion of the
7 United States, while refraining from competing for Players’ services outside New England and
8 thereby affecting Players in all 50 states, including Washington; (2) the defense of this action
9 imposes no extra burden on the QMJHL because the QMJHL is represented by the same counsel
10 as the WHL and OHL, neither of which contests the exercise of jurisdiction over them as
11 burdensome; (3) there is no conflict with Canada’s sovereignty for the reasons explained in
12 Plaintiffs’ opposition to Defendants’ comity arguments, *infra* at 35–37; and, (4) the United States
13 has a substantial interest in the vigorous enforcement of its antitrust laws in service of protecting
14 American teenagers harmed by the QMJHL’s conduct. In short, a defendant who benefits from
15 shopping for Players’ services in the United States cannot credibly claim that it would be
16 unreasonable to litigate here when its method for “shopping” for players is anticompetitive and
17 Plaintiffs’ claims arise out of such conduct. *See Ford Motor Co.*, 592 U.S. at 360 (“When ... a
18 company ‘exercises the privilege of conducting activities within a [forum]—thus ‘enjoy[ing] the
19 benefits and protection of [its] laws’—the [forum] may hold the company to account for related
20 misconduct.” (citation omitted)).
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24 **B. The OHL Non-Corporate Defendants are Subject to Personal Jurisdiction**

25 Two U.S.- and two Ontario-based clubs contend they are not subject to Clayton Act
26 jurisdiction because they are not corporations and otherwise lack sufficient contacts with
27 Washington to be subject to jurisdiction here. CHL Mem. 15.

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1. Clayton Act Jurisdiction

The Sarnia Sting is operated by an unlimited liability corporation (“ULC”), which is a taxable corporation under Canadian Law, Compl. ¶ 124, and thus subject to Section 12 of the Clayton Act. *See Wyndham Hotel Grp. Canada v. Ostrander*, No. 21-CV-16333, 2022 WL 16552817, at *2 (D.N.J. Oct. 31, 2022) (“A ULC is an entity incorporated in the usual manner, possessing the formal characteristics of an ordinary corporation.”); *Link v. Link*, 2020 NSSC 293 (N.S. S.C.) ¶ 37 (“Generally, for the purposes of Canadian tax law, an NS CA company, whether liability is limited or unlimited, is recognized as a corporation.”).

The Erie Otters and Ottawa 67’s are operated by limited partnerships and the Saginaw Spirit is operated by a limited liability company. Compl. ¶¶ 112, 119, 123. Courts have applied Section 12 to limited partnerships, limited liability companies, and other “corporate-like entities.” *See, e.g. Arkansas v. Syngenta Crop Protection AG*, No. 22-CV-1287, 2025 WL 551660, at *6 (E.D. Ark. Feb. 19, 2025) (finding that courts have applied Section 12 to “corporate-like entities”); *Gilliam v. Speier*, 318 B.R. 712, 717 (9th Cir. BAP 2004) (finding that an LLC “fits comfortably within the Bankruptcy Code’s definition of ‘corporation’”); *MacCallum v. New York Yankees Partnership*, 392 F. Supp. 2d 259, 263 (D. Conn. 2005) (“[U]nincorporated business entities such as partnerships should be treated like corporations when applying section 1391(c)”; *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 841-42 (9th Cir. 1986) (“[C]ourts have analogized partnerships and associations to corporations in making venue determinations.”). In fact, the Department of Justice recently invoked Section 12 to assert personal jurisdiction over Google LLC. Am. Compl. ¶ 307, *United States v. Google LLC*, No. 23-CV-108 (E.D. Va. Apr. 17, 2023), Dkt. No. 120.

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Personal jurisdiction over a defendant is “proper under Rule 4(k)(2) when (1) the action arises under federal law, (2) ‘the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction’ [as the Canadian OHL Non-Corporate Defendants contend], and (3) the court’s exercise of jurisdiction comports with due process.” *Ayla, LLC v. Ayla Skin Party, Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021).

3. Erie and Saginaw have minimum contacts with Washington

C. The NHL is subject to personal jurisdiction

The Clayton Act also confers jurisdiction over the NHL. Although Defendants cite non-binding cases in support of their argument that the Clayton Act applies only to incorporated entities, the Ninth Circuit has not decided whether an unincorporated business entity, as distinguished from an individual, is a “corporation” for purposes of Clayton Act jurisdiction. Analogous cases suggest that it would. *See, e.g., D’Augusta*, 117 F.4th at 1100 n.1 (finding district court erred in concluding that Section 12 did not reach limited partnership defendant).

2. Long-Arm Jurisdiction

Even if the forum is limited to Washington, Plaintiffs have made a *prima facie* showing on the first two elements and the NHL has failed to meet its burden to show the exercise of jurisdiction over it would be unreasonable.

i. The NHL purposefully availed itself of the laws of, and directed its conduct at, Washington

The NHL argues that it did not “expressly aim” any conduct at Washington and, if it did, it could not have known that the conduct would cause harm in that forum.⁴ Plaintiffs’ Complaint amply demonstrates the opposite. Plaintiffs have alleged in detail the NHL’s involvement in a transnational conspiracy that includes several Clubs, and an NHL club, that are located in Washington. Compl. ¶¶ 32-40, 82, 268-279, 281, 291, 293, 319-21. Gould played for a WHL Club in Washington and suffered injuries here. *Id.* ¶¶ 72-74. Moreover, the NHL–CHL Agreement requires, for example, that a Player drafted into the NHL from Kennewick’s Tri-City Americans must be returned to Washington (*i.e.*, Tri-City) if he does not make the NHL club’s roster. *Id.* ¶¶ 270-71, 287. In this respect, the NHL actively participates in the conspiracy by requiring that NHL clubs return Players who do not make their rosters to their former Clubs, ensuring that these Players will again be subject to the same anticompetitive restraints. Similarly, the NHL-CHL Agreement requires that the *Seattle Kraken* return to any Major Junior Defendant, including any QMJHL Club, any NHL draftee who does not make the Kraken’s opening day roster. Indeed, the Kraken did so just a few months ago when they assigned their top draft pick in the

⁴ In a footnote, the NHL argues that the Complaint’s allegations failed to show purposeful availment. NHL Mem. 8 n.10. As shown above, however, the Court may take judicial notice of the NHL’s 2022 admission in this District that it transacts business here.

1 2024 NHL draft, Berkly Catton, to the WHL's Spokane Chiefs.⁵ This conduct is "expressly
2 aimed" at Washington and profits the Kraken and the NHL at Players' expense. In addition, the
3 NHL further expressly aims its conduct at Washington because it compels its constituent clubs to
4 cause their minor league affiliates in the AHL and the ECHL to refuse to compete for the services
5 of Players in Washington under the age of 20.

6 *ii. The claims arise out of or relate to the NHL's contacts with Washington*

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8 For the reasons discussed above, many of Plaintiffs' claims arise out of or relate to the
9 NHL's contacts with Washington. For example, Plaintiffs challenge the part of the NHL–CHL
10 Agreement that requires NHL clubs, including the Kraken, to return draftees that do not make their
11 rosters to the Major Junior Clubs that owned their rights, thereby perpetuating the scheme with
12 respect to those Players. Similarly, Plaintiffs challenge the NHL's payments that reinforce, for
13 example, the Tri-City Americans' agreements with other WHL Clubs not to compete for Players
14 outside of their allocated territory in the western part of North America.

15 *iii. The NHL has failed to meet its burden of showing the exercise of*
16 *personal jurisdiction would be unreasonable*

17 The NHL argues that conferring jurisdiction over it would be unreasonable because it has
18 "limited contacts" with Washington, and it would be inefficient to litigate in this District because
19 the witnesses and evidence against the NHL are elsewhere. NHL Mem. 15. The NHL neglects to
20 mention that it has previously been subject to suit in this district. *See Smack Apparel Co. v. Seattle*
21 *Hockey Partners, LLC*, No. 22-CV-44, 2022 U.S. Dist. LEXIS 149326 (W.D. Wash. Aug. 19,
22 2022) (NHL named as defendant); *Seattle Totems Hockey Club, Inc. v. NHL*, 652 F.2d 852 (9th
23 Cir. 1981) (on appeal from the Western District of Washington); *Seattle Totems Hockey Club, Inc.*

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⁵ *See supra* n.1.

1 v. *NHL*, No. 75-CV-804, 1983 U.S. Dist. LEXIS 20342 (W.D. Wash. Aug. 22, 1983) (denying
2 NHL’s motion for summary judgment). In none of these cases did a court dismiss the NHL for
3 want of personal jurisdiction.

4 The NHL also fails to address the factors this Court considers for reasonableness, and the
5 arguments it does assert are unpersuasive. The NHL mostly focuses on asserted burden and
6 efficiency, citing a pre-*Daimler* non-antitrust case against a foreign individual with few ties to the
7 chosen forum to argue that the NHL has not “purposefully injected” itself into this District.
8 *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1125 (9th Cir.
9 2002). Unlike the defendant in *Glencore*, the NHL has many ties to Washington, including a
10 professional hockey team, merchandising and television revenues, and its participation in a
11 transnational conspiracy that inflicts antitrust injury on teenage hockey players from Washington.
12 Indeed, just a year ago the NHL staged its marquee event, the Winter Classic, in this forum.⁶

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14 The NHL must meet a high hurdle with respect to its efficiency argument because the
15 “inconvenience for [the defendant] must be so great as to constitute a deprivation of due process.”
16 *In re CRT Antitrust Litig.*, 27 F. Supp. 3d at 1013 (“[C]ostliness and evidentiary complexity are
17 simply parts of modern, multinational litigation, especially when the claims at issue concern an
18 international price-fixing conspiracy”); *see also Shields*, 419 F. Supp. 3d at 1210 (location of
19 evidence and witnesses no longer weighed heavily given the “modern advances in communication
20 and transportation”). The NHL has failed to demonstrate the exercise of jurisdiction over it would
21 deprive it of due process.
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25 ⁶ See Geoff Baker, *NHL’s outdoor tradition continues in Seattle with Winter Classic*, Seattle
26 Times (Dec. 30, 2023), <https://www.seattletimes.com/sports/kraken/nhls-outdoor-tradition-continues-in-seattle-with-winter-classic/>.
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1 **IV. NEITHER THE FTAIA NOR PRINCIPLES OF COMITY BARS PLAINTIFFS’**
2 **CLAIMS**

3 **A. Legal Principles Applicable to Rule 12(b)(6) Motions**

4 A complaint need only include “a short and plain statement of the claim showing that the
5 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). In deciding a Rule 12(b)(6) motion, courts
6 “accept as true all facts alleged in the complaint and construe them in the light most favorable to
7 plaintiffs, the non-moving party.” *Snyder & Assocs. Acquisitions LLC v. United States*, 859 F.3d
8 1152, 1157 (9th Cir. 2017).

9 **B. Defendants’ Motion is Premature**

10 Following the Ninth Circuit’s decision in *Hsiung*, a defendant may no longer move for
11 dismissal on FTAIA grounds pursuant to Rule 12(b)(1), as the FTAIA is no longer deemed a
12 jurisdictional limitation on a court’s power to hear the dispute. *See, e.g., In re Capacitors Antitrust*
13 *Litig.*, No. 14-CV-3264, 2016 WL 5724960, at *3 (N.D. Cal. Sept. 30, 2016) (citing *United States*
14 *v. Hsiung*, 778 F.3d 738, 751 (9th Cir. 2015)). Accordingly, Defendants moved pursuant to Rule
15 12(b)(6). This distinction is significant because, unless a defect in pleading is plainly apparent on
16 the face of the Complaint, questions about the applicable scope of the Sherman Act (including
17 whether the FTAIA creates a carve-out on the facts of this case) are merits issues that cannot be
18 resolved under Rule 12(b)(6). *See In re Optical Disk Drive Antitrust Litigation*, No. 10-md-02143-
19 RS, 2015 WL 1926635, at *3 (N.D. Cal. Apr. 28, 2015) (denying motion to dismiss on FTAIA
20 grounds because motion “implicates issues that ultimately may be appropriate for consideration
21 on summary judgment, but which do not warrant dismissal at the pleading stage”); *see also CSR*
22 *Ltd. v. Cigna Corp.*, 405 F. Supp. 2d 526, 533 (D.N.J. 2005) (“[I]f the FTAIA merely created
23 additional substantive elements, then arguments to dismiss antitrust claims under the FTAIA
24 would be properly analyzed under summary judgment standards pursuant to [Rule 56].”).
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1 Plaintiffs allege that Defendants engaged in anticompetitive conduct in the United States
2 by agreeing to allocate an exclusive territory to each League and that each U.S. state was
3 specifically allocated to one of the three exclusive territories. Compl. ¶¶ 84-146, 128, 168-171,
4 174-179. Plaintiffs further allege that Defendants, either directly or through their Leagues, scout
5 Players in the United States and that Players who reside outside of a League's exclusive territory
6 are not scouted by that League or by any of its Clubs. *Id.* ¶¶ 177, 179, 280. Plaintiffs also allege
7 each League holds a player draft each year and Clubs may only draft Players who reside in the
8 exclusive territory allocated to the Clubs' League. *Id.* ¶¶ 179-83, 281. Accordingly, a Player who
9 resides in a U.S. state may only be drafted by a Club from a League that has been allocated
10 exclusive rights to Players in that state. And once drafted, that Player may only sign with his
11 drafting Club. The market for that Player's labor is restrained because no other Club (including
12 U.S.-based Clubs) will compete for his services, either due to the market allocation agreement or
13 as a consequence of the draft. The market for a Player who resides in Canada is similarly
14 restrained: Once drafted, the market for his services is restrained because no Club (including U.S.-
15 based Clubs) other than his drafting Club will compete for his services. Accordingly, Defendants
16 have restrained competition in the North American labor market for Players' services, which
17 includes the United States. *See Subspace Omega LLC v. Amazon Web Servs.*, No. 23-CV-1772,
18 2024 WL 5202517 (W.D. Wash. Dec. 23, 2024) (denying motion to dismiss on FTAIA grounds
19 because plaintiff alleged that it was excluded as a competitor in a global market that included the
20 United States).

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24 Plaintiffs further allege Defendants' naked restraint on competition ensures the
25 effectiveness of Defendants' other restraints—including their agreements to require Players to sign
26 SPAs that, among other things, (a) have a multiyear term covering the entirety of a Players' major
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1 junior career, (b) set prohibitive development or transfer fees that must be paid before a Player
2 may be released from his SPA, (c) allow Clubs to retain Players on Protected Lists even if they are
3 inactive, and (d) provide for non-competitive compensation for Players' services, which are
4 provided in Canada and the United States. Compl. ¶¶ 201-223. Defendants' agreements also
5 precluded age-appropriate Players from playing on teams in the AHL and ECHL and limited their
6 ability to play in the NHL (by creating incentives for NHL clubs to return NHL players to their
7 former Major Junior Clubs). *Id.* ¶¶ 220, 271-272, 277.

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9 As explained below, these allegations are more than sufficient to show that Plaintiffs have
10 pleaded a viable Sherman Act claim and that factual disputes regarding the application of the
11 FTAIA, if any, are appropriately addressed at summary judgment.

12 **C. The FTAIA Does Not Immunize Defendants**

13 1. The FTAIA Does Not Apply to Claims Involving Markets that Include the United States

14 As courts in the Ninth Circuit have recognized, Congress intended the FTAIA to "assure
15 American companies that they would not be liable under the Sherman Act for conduct that
16 typically would be considered anticompetitive, *so long as that conduct adversely affected foreign*
17 *markets only.*" *Capacitors*, 2016 WL 5724960, at *1 (citing *Empagran*, 542 U.S. at 161)
18 (emphasis added). The FTAIA does so "by setting forth a general rule stating that the Sherman
19 Act 'shall not apply to conduct involving trade or commerce with foreign nations.'" *Precision*
20 *Assocs. v. Panalpina World Transp.*, No. 08-CV-42, 2013 WL 6481195, at *23 (E.D.N.Y. Sept.
21 20, 2013). In *Empagran*, the Supreme Court interpreted this phrase to mean "'commerce that did
22 not involve American exports, but which was *wholly foreign.*'" *Empagran*, 542 U.S. at 163
23 (emphasis added). The Supreme Court supported this interpretation with the House Report on the
24 FTAIA, in which Congress wrote: "It is thus clear that *wholly foreign transactions* as well as export
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1 transactions are covered by the [FTAIA] . . .” *Empagran*, 542 U.S. at 163 (quoting H.R. Rep. No.
2 97-686 (1982)) (emphasis added).

3 In *Subspace Omega*, this Court denied an FTAIA challenge in a monopolization case
4 because the “relevant market” included, but was not limited to, the United States. 2024 WL
5 5202517, at *12. This Court found that the effect of the defendant’s anticompetitive conduct was
6 to eliminate the plaintiff as a competitor, which resulted in a decrease in quality across the relevant
7 global market. *Id.* The same analysis applies here. Defendants’ anticompetitive conduct restrains
8 competition for Player services across North America. Thus, Players who reside in Maine and
9 Quebec suffer the same antitrust injury, in part, due to Defendants’ conduct in Michigan,
10 Pennsylvania, and Washington, while Players who reside in Washington suffer antitrust injury, in
11 part, due to Defendants’ conduct in Ontario and Quebec.
12

13 Moreover, Defendants’ contention that 85% of the relevant transactions between Players
14 and Clubs occurred outside of the United States is mistaken. MJ Mem. 7. Courts recognize that
15 a “transaction” encompasses *all conduct performed under a contract*, from execution until “all the
16 legal rights and obligations under the contract have been extinguished.” *Duarte v. Quality Loan*
17 *Serv. Corp.*, No. 17-CV-8014, 2018 WL 2121800, at *7 (C.D. Cal. May 8, 2018) (citing Black’s
18 Law Dictionary (10th ed. 2014)). The SPAs here are multiyear contracts that cover the entirety of
19 Players’ major junior careers. Compl. ¶ 24, 76, 166, 196, 204, 211. Accordingly, all work
20 performed by Players and Defendants under those SPAs is therefore part of the relevant
21 “transaction.”
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24 Defendants’ myopic focus on the geographic location of the execution of the SPAs and the
25 residence of Major Junior Clubs mirrors arguments made by defendants in *Capacitors*, where the
26 district court chastised the defendants for focusing exclusively on where the plaintiffs chose to
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1 purchase the price-fixed product, writing: “Defendants go too far. The locus of a transaction is
2 not dispositive under the FTAIA.” *Capacitors*, 2016 WL 5724960, at *5. The district court then
3 considered the entirety of the transaction—who sold the product, where it was sold, who paid for
4 it, where it was shipped, who took delivery, and where title transferred, among other factors. *Id.*;
5 see also *Am. Copper & Brass, Inc. v. Donald Boliden AB*, No. 04-CV-2771, 2006 WL 8434907,
6 at *3 (W.D. Tenn. Mar. 27, 2006) (“Notwithstanding Defendants’ claim that its extraterritorial
7 conduct had a *de minimis* effect on this country, *once a defendant executes performance under a*
8 *price fixing agreement in the United States*, the agreement and the act are sufficient to establish a
9 claim under the Sherman Act.”) (emphasis added).

11 The same broad view of an individual transaction is even more appropriate here, because
12 the location of Players’ performance of their SPAs is a function of Defendants’ illegal agreement.
13 While the relevant transaction between a Player and the Club that drafted (or traded for) him
14 includes the (forced) signing of an SPA, it also includes the market allocation agreement itself, as
15 well as practices, travel, and games played under that SPA, Defendants’ payment of monies to the
16 Player, the Player’s participation in Defendants’ marketing activities, and Defendants’ broadcast
17 of that Player’s games. Most of these factors apply to all Players, and some portion of them apply
18 to all of them. At this stage, the allegations are sufficient to show that the “transactions” included
19 the United States, were thus not “wholly foreign,” and accordingly fall outside the scope of the
20 FTAIA. Defendants’ contrary arguments rest on, at best, disputed inferences that cannot be drawn
21 in their favor.

24 Defendants rely exclusively on cases where the relevant transactions were clearly “wholly
25 foreign.” See, e.g., *Empagran*, 542 U.S. at 159 (relevant transaction was wholly foreign because
26 foreign plaintiff purchased price-fixed product outside of the United States); *In re Dynamic*

1 *Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008) (same); *see*
2 *also Motorola Mobility v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015) (relevant transaction
3 was wholly foreign because Motorola decided to have its foreign subsidiary purchase LCD panels
4 from foreign defendants); *In re Rubber Chems. Antitrust Litig.*, 504 F. Supp. 2d 777 (N.D. Cal.
5 2007) (same); *In re Intel Corp. Microprocessor Antitrust Litig.*, 452 F. Supp. 2d 555 (D. Del. 2006)
6 (relevant transaction was wholly foreign because plaintiff's monopolization claims were based on
7 lost sales of foreign products to foreign customers).

8
9 Those cases are easily distinguished from Plaintiffs' claims here. First, those cases
10 concerned millions of individual transactions which began with a purchase order and ended with
11 the payment of funds and the delivery of the ordered goods outside of the United States. Where
12 those individual transactions were "wholly foreign"—*i.e.*, the price-fixed goods were bought by,
13 paid for, and delivered to foreign entities—they were excluded by operation of the FTAIA. *Rubber*
14 *Chems.*, 504 F. Supp. 2d at 784; *Empagran*, 542 U.S. at 159; *In re DRAM Antitrust Litig.*, 546
15 F.3d at 984. Here, by comparison, Plaintiffs allege that in performance of their contractual
16 obligations to their Clubs, they travel within or to the United States, practice in the United States,
17 and play hockey games in the United States. Compl. ¶¶ 152, 280-282. In cases where transactions
18 that were performed in part in the United States, the transactions were held *not* to be barred by the
19 FTAIA. *See Capacitors*, 2016 WL 5724960, at *3 ("[T]he parties agree that [foreign] capacitor
20 sales billed to entities in the United States are not excluded by the FTAIA *regardless of where the*
21 *products were ultimately delivered.*") (emphasis added).

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24 Defendants claim *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir.
25 2015), is instructive. MJ Mem. 10. It is, but not in a way that helps them. In that case, Motorola
26 purchased priced-fixed products from foreign defendants in (1) the United States and, (2) outside
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1 the United States through foreign subsidiaries. *Motorola*, 775 F.3d at 817. The Seventh Circuit
2 held that Motorola could not seek damages for the purchases it made through those subsidiaries
3 *because Motorola made a conscious decision to operate through those foreign entities* which, for
4 example, provided the Motorola with tax benefits overseas. *Id.* at 820-21. The opposite is true
5 here: Players did not *choose* to sign with Canadian clubs any more than they chose to agree to the
6 terms of the SPAs that they had to sign as a result of the anticompetitive scheme. Through
7 involuntary drafts, geographic market allocations, and unwanted trades, *Defendants* decided where
8 Plaintiffs could play. Consider, for example, the experience of Gould, who was drafted by Tri-
9 City and then traded against his wishes to Prince George. Or DiLaura, a Minnesota resident who
10 was drafted by Prince George. Defendants would allow Gould to seek damages only for the period
11 of time he was allocated by Defendants' conspiracy to Tri-City and would deny damages to Isaiah
12 altogether. MJ Mem. 11. It is an illogical argument that cannot be squared with the text of the
13 FTAIA, *Empagran*, or *Motorola*.⁷

16 2. Plaintiffs Meet the FTAIA's Domestic Effects Exception

17 Defendants' FTAIA arguments fall at the very first hurdle because their conduct and the
18 relevant transactions are not "wholly foreign," precluding application of the FTAIA. For the same
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20 ⁷ *Motorola* confirmed that even if 99% of a plaintiff's damage claims should be dismissed pursuant
21 to the FTAIA, injunctive relief could still be granted. *Motorola*, 775 F.3d at 825-26 (noting
22 difference between private damage claims and criminal injunctive relief). The FTAIA is no more
23 a hurdle here than if Department of Justice had sought the relief itself. Defendants assert that two
24 district courts have declined to issue injunctions against "foreign conduct giving rise to foreign
25 effects," CHL Mem. 10., but neither case remotely resembles this one. The first, *DRAM*, presents
26 an unremarkable application of the FTAIA to damage claims brought by a foreign purchaser
27 arising from purely foreign conduct in which the district court did not independently analyze the
request for injunctive relief. The second, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-
1827 SI, 2008 WL 2219837 (N.D. Cal May 27, 2008), involved a request to enjoin a proposed
joint venture in Japan between foreign corporations where the plaintiffs failed to show any
potential harm to competition.

1 reasons, Defendants' conspiracy has a direct, substantial, and reasonably foreseeable effect on U.S.
2 commerce and that effect gives rise to Plaintiffs' claims. *See Empagran*, 542 U.S. at 162. As
3 shown, the territorial allocations and restrictions on player movement directly caused a restriction
4 in competition among U.S.-based clubs for the Players' labor and Plaintiffs' claims all arise from,
5 among other things, that restriction. *See Shields*, 419 F. Supp. 3d at 1219 (quoting *In re DRAM*
6 *Antitrust Litig.*, 546 F.3d at 988). Absent any effect on domestic commerce, Players (including
7 Canadian Players forced to sign SPAs with Canadian Clubs) could have marketed themselves to
8 U.S.-based Clubs and negotiated better contract terms.

10 In short, the "FTAIA does not state or support a *per se* rule excluding foreign purchasers
11 just because they did their buying abroad." *Capacitors*, 2016 WL 5724960, at *5. To prevail on
12 their motion, Defendants would have to be able to establish that, as a matter of law, the pleadings
13 disclose *only* "foreign injury *independent of* domestic effects." MJ Mem. 13 (quoting *Rubber*
14 *Chems.*, 504 F. Supp. 2d at 784). They cannot, as that would require the Court to draw inferences
15 from the pleadings in Defendants' favor. Indeed, a straight line can be drawn between the
16 restriction of competition among buyers across North America and Plaintiffs' injuries. That line
17 exists regardless of whether Defendants allocated a Player to a Canadian- or U.S.-based Club. As
18 was the case for the plaintiff in *Subspace*, Plaintiffs' allegations are "not reliant on the kind of
19 intervening developments that render its alleged [domestic] effects speculative." 2024 WL
20 5202517, at *12.

22 **D. Comity Principles Provide No Basis for Dismissal**

24 Once the Court determines that the FTAIA does not require dismissal of any claims, it can
25 summarily reject Defendants' unsupported and sparse comity argument. Defendants cite no case
26 in which a district court dismissed on comity grounds alone, and the law does not support their
27 arguments. *See, e.g., Empagran*, 542 U.S. at 164 ("[O]ur courts have long held that application of

1 our antitrust laws to foreign anticompetitive conduct is nonetheless reasonable, and hence
2 consistent with principles of prescriptive comity, insofar as they reflect a legislative effort to
3 redress domestic antitrust injury that foreign anticompetitive conduct has caused.”). Comity
4 should not bar Plaintiffs’ claims for the following reasons:

5 *First*, comity counsels courts to abstain from asserting *subject matter jurisdiction* that was
6 otherwise properly asserted, only where doing so would conflict with or interfere with another
7 nation’s laws. *Sarei v. Rio Tinto, PLC*, 487 F.3d 1193, 1211 (9th Cir. 2007); *see also* Restatement
8 (3d) of the Foreign Relations Law of the U.S. § 403 cmt. e (noting that conflicts exist “only when
9 one state requires what another prohibits, or where compliance with the regulations of two states
10 exercising jurisdiction consistently with this section is otherwise impossible”). But Defendants’
11 motion is brought pursuant to Rule 12(b)(6), not Rule 12(b)(1). To the extent comity is relevant
12 to Defendants’ motion, it is solely as a principle that informed the statutory language of the FTAIA.
13

14 *Second*, Plaintiffs’ claims do not raise any comity concerns. Comity concerns only exist
15 where there is a “true conflict of law” because the two countries’ legal demands are
16 “irreconcilable.” *In re Vitamin C Antitrust Litig.*, 8 F.4th 136, 145 (2d Cir. 2021) (*citing Hartford*
17 *Fire Ins. Co. v. California*, 509 U.S. 764, 799 (1993)); *see also* Restatement (3d), *supra* (same).
18 Defendants make no such showing here. As Defendants note, their anticompetitive conduct has
19 been challenged under Canadian law.⁸ Defendants mischaracterize the holding of *Mohr*: the court
20 did not dismiss the case on the merits or because the conduct alleged by Mohr was legal in Canada.
21 *Mohr v. NHL*, [2021] FC 488 (Can.). Rather, the Mohr court found that Mohr’s claims could only
22
23

24 ⁸ Contrary to Defendants’ baseless assertions, Plaintiffs do not seek to recover damages here that
25 are duplicative of the damages sought by plaintiffs in *Carcillo* or *Latulippe*. Plaintiffs cite those
26 cases in support of their motion for a preliminary injunction, Dkt. No. 41, as evidence of the
27 irreparable harms that Players face should the requested injunction not issue. Plaintiffs do not seek
to recover damages for personal injury in this case.

1 be brought by the Canadian Competition Bureau under Section 90.1 of the Canadian Competition
2 Act. *Id.* ¶¶ 57-60.

3 Accordingly, because Defendants’ conduct may be challenged as civil violations under
4 both the Sherman Act and the Canadian Competition Act, the conflict of law necessary for this
5 Court to abstain from exercising its jurisdiction on comity grounds is lacking. The availability of
6 disparate enforcement mechanisms does not change the fact that Defendants can comply with both
7 U.S. and Canadian law. *See Vitamin C*, 8 F.4th 162-63 (dismissing claims because of the existence
8 of a true conflict between Chinese and U.S. antitrust law).
9

10 THE NHL’S STANDING AND LABOR EXEMPTION ARGUMENTS

11 V. PLAINTIFFS GOULD AND DILaura HAVE STANDING

12 Gould and DiLaura have Article III and antitrust standing to pursue their claims against the
13 NHL because they were among the direct and targeted victims of Defendants’ anticompetitive
14 agreements, *see, e.g.*, Compl. ¶¶ 32-45; 71-75; 77-80; 147-149; 165; 213-216, 222, 248-50; 217-
15 18, 248-249; 220; 261; 269-271; 268, 272-274; 275-279; 281; 298-305, and a favorable decision
16 in this litigation will redress that harm, *id.* ¶¶ 52-56; 334-336.
17

18 A. Gould and DiLaura Have Article III Standing

19 “To establish Article III standing, ‘a plaintiff must show that (1) he has suffered an
20 actual injury in fact, which is concrete and particularized; (2) there is a causal connection
21 between the injury and conduct complained of; and (3) it is likely that a favorable decision in the
22 case will redress the injury.’ *Adan v. Swedish Health Services*, No. 2:23-cv-01266-TL, 2024 WL
23 2398208 at *3 (W.D. Wash. May 23, 2024) (Lin, J.) (quoting *Mansor v. U.S. Citizenship and*
24 *Immigr. Servs.*, 685 F. Supp. 3d 1000, 1008 (W.D. Wash. 2023)). At the motion to dismiss stage,
25 this is a relatively low burden. *Lujan v. Defenders of Wildlife*, 504 U.S. at 561 (1992) (each
26 element of standing must be supported “with the manner and degree of evidence required at the
27

1 successive stages of the litigation”); *Mansor*, 685 F. Supp. 3d 1000, 1008 (W.D. Wash. 2023)
2 (noting lower burden at pleading stage under *Lujan*) (citing *Barnum Timber Co. v. EPA*, 633 F.3d
3 894, 899 (9th Cir. 2011)). Gould and DiLaura easily meet this standard. Each was drafted pursuant
4 to Defendants’ unlawful market allocation and drafts, which, combined with the restrictive
5 provisions of the SPAs, restrained competition for their services. The harms they suffered are
6 concrete, identifiable, and remediable.

7
8 The NHL claims that the harms Gould and DiLaura suffered were *only* caused by the Major
9 Junior Clubs’ conduct. NHL Mem. 16-17. The NHL, however, relies again on a crimped reading
10 of the Complaint, ignoring allegations that render it an active participant in the conspiracy. Compl.
11 ¶¶ 268-279 (describing NHL’s role in the conspiracy). It disregards, for example, the millions of
12 dollars in funding payments it makes to the Major Junior Clubs. Compl. ¶ 266(j). Gould and
13 DiLaura need not prove that they would have made it to the NHL. They need only plausibly allege
14 (and they have) that the NHL participated in a conspiracy that caused them some harm.⁹ *See, e.g.,*
15 *Markson v. CRST Int’l, Inc.*, No. 17-CV-1261, 2022 WL 790960, at *11 (C.D. Cal. Feb. 24, 2022)
16 (“Because antitrust liability is joint and several, a Plaintiff injured by one Defendant as a result of
17 the conspiracy has standing to represent a class of individuals injured by any of the Defendant’s
18 co-conspirators.” (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 508
19 (S.D.N.Y. 1996))).

20
21 The cases on which the NHL relies are inapposite. They address standing in non-
22 conspiracy cases whereas, here, the NHL is jointly and severally liable for the injuries suffered by
23 Gould and DiLaura. *Pinkerton v. United States*, 328 U.S. 640, 647 (1946) (“[T]he overt act of one
24

25
26 ⁹ The NHL argues in a footnote that allegations that the NHL clubs control their AHL and ECHL
27 affiliates are conclusory, NHL Mem. 17 n.12, but the Complaint alleges facts demonstrating that
NHL clubs control—at a minimum—their affiliates’ rosters. *See* Compl. ¶¶ 220, 268, 273 279.

1 partner in crime is attributable to all.”); *see also Barnum Timber*, 633 F.3d at 901-02 (finding
2 plaintiff had standing and noting plaintiff “need not eliminate any other contributing causes [of the
3 harm suffered] to establish its standing”).

4 **B. Gould and DiLaura Have Antitrust Standing**

5 As a general principle, the direct victims of antitrust violations have antitrust standing.
6 *Assoc. Gen. Contractors of Cal. v. Cal. State Council of Carpenters (AGC)*, 459 U.S. 519, 541
7 (1983). The Supreme Court has identified several factors that courts should consider in assessing
8 the availability of relief for an antitrust violation: “a causal connection between an antitrust
9 violation and harm to the [plaintiffs]”; “improper motive”; whether the Sherman Act was enacted
10 to prevent the type of injury at issue; “the directness or indirectness of the asserted injury”; the
11 speculative nature of the damages; and “the potential for duplicative recovery or complex
12 apportionment of damages.” *AGC*, 459 U.S. at 537-46.

14 The NHL’s antitrust standing argument boils down to proposition that because Gould and
15 DiLaura were not drafted by the NHL, they could not have been harmed by the NHL. NHL Mem.
16 18 (“Individual Plaintiffs were never even drafted into the NHL, which means [the non-rostered
17 player-return] provision never applied to them, let alone caused them antitrust injury.”). As
18 discussed above, the Complaint alleges that NHL is indispensable to the perpetuation of
19 Defendants’ scheme.

21 In addition, Gould’s and DiLaura’s antitrust injuries are traceable to the conspiracy. No
22 court has parsed antitrust standing co-conspirator by co-conspirator, weeding out those co-
23 conspirators whose role in the conspiracy had less direct impact on a particular plaintiff’s injuries.
24 Such a practice would essentially eliminate joint-and-several liability for antitrust conspirators.
25 Tellingly, none of the CHL clubs challenge Gould or DiLaura’s antitrust standing. Gould and
26 DiLaura had no contact with the QMJHL, for instance. If Gould and DiLaura have antitrust
27

1 standing against the QMJHL due to its participation in the conspiracy, it stands to reason that
2 Gould and DiLaura have antitrust standing against the NHL for its participation in the conspiracy.

3 Again, the Complaint does not solely allege that the NHL participates in the conspiracy
4 through its agreement in the NHL-CHL Agreement. Rather, the NHL encourages and facilitates
5 the conspiracy through *multiple* provisions of that anticompetitive Agreement, including
6 provisions committing the NHL to provide the Major Junior Defendants significant funding in
7 support of their anticompetitive system. Compl. ¶ 266(j). The Complaint also alleges that the
8 NHL directly encourages the Major Junior Defendants' anticompetitive system, which continues
9 to confer enormous financial benefits on the NHL, by prohibiting its minor league affiliates from
10 competing with the Major Junior Defendants for under-20 North American hockey talent.

12 **VI. THE NON-STATUTORY LABOR EXEMPTION DOES NOT PROTECT THE**
13 **NHL**

14 The NHL's contention that the non-statutory labor exemption immunizes it from liability
15 for the anticompetitive conduct alleged in the Complaint should also be rejected.

16 The non-statutory labor exemption shields from federal antitrust liability certain restraints
17 on competition imposed through the collective bargaining process. *Brown v. Pro Football, Inc.*,
18 518 U.S. 231, 236-37 (1996). The doctrine seeks to reconcile potential conflicts between federal
19 labor and antitrust law by allowing unions and employers to negotiate CBAs and other contracts
20 that address mandatory terms and conditions of employment in the bargaining unit represented by
21 the union, despite the potential anticompetitive effects of those agreements. *Id.* at 237; *Allen*
22 *Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797, 806 (1945). The doctrine cannot immunize
23 the NHL from liability for the anticompetitive conduct alleged here, though, for multiple reasons.

24 First, the NHL relies on documents and evidence outside the scope of the Complaint that
25 may not be considered under Rule 12(b)(6). Second, even if those documents could be considered,
26
27

1 and even if they were construed as NHL now urges, they would not provide blanket immunity to
2 the NHL because (1) the challenged restraints do not govern entry into the NHL and primarily
3 affect Major Junior Players who either never entered the NHL or who already left it, and
4 (2) Plaintiffs also challenge a restraint that the NHL recognizes is entirely outside the scope of
5 those documents, the NHL's agreement to prohibit its minor league affiliates from competing with
6 the Major Junior Defendants for under-20 hockey talent. Restraints that principally, if not solely,
7 affect non-parties to the NHL's bargaining relationship with the NHLPA cannot be protected by
8 any labor immunity flowing from the NHL-NHLPA CBA, nor can any restraints having no
9 possible connection to that CBA.
10

11 **A. The NHL's collective bargaining agreement with the labor union representing**
12 **its players is not properly before this Court on the NHL's motion to dismiss.**

13 The NHL's non-statutory exemption argument should not even be considered at this stage,
14 because it relies upon evidence not properly before the Court: (1) its CBA with the labor union
15 that represents its players, the National Hockey League Players Association ("NHLPA"), *see* NHL
16 Mem. 21 (citing Ex. 4); and (2) factual representations made by NHL Deputy Commissioner
17 William L. Daly regarding the NHLPA's negotiations with the NHL and an e-mail exchange
18 attached to his declaration containing inadmissible hearsay. NHL Mem. 4-5, 22 (citing Dkt. No.
19 142 ("Daly Decl.") ¶¶ 13-16 & Ex. 5).
20

21 Courts adjudicating Rule 12(b)(6) motions may only consider documents attached or
22 incorporated by reference into the complaint through "extensive" reference therein or because
23 plaintiff's claims necessarily rely upon them, and certain public records to the extent they contain
24 judicially noticeable facts. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998-99, 1002-03
25 (9th Cir. 2018). The NHL-NHLPA CBA and the Daly declaration fall into neither category. In
26 fact, the NHL does not even attempt to argue that the Daly declaration is admissible.
27

1 The NHL's only textual basis for arguing that the Complaint incorporates the NHL-
2 NHLPA CBA by reference is a statement in a single paragraph in Plaintiffs' 353-paragraph
3 Complaint that "[p]layer drafts are ... used in several other professional sports leagues" and "have
4 been the subject of collective bargaining with duly certified player associations." NHL Mem. 4;
5 *see* Compl. ¶ 192. That statement does not directly reference or quote *any* CBA, let alone the
6 NHL-NHLPA CBA, and is not close to the "extensive" reference required to incorporate a
7 document by reference. *United States v. Ritchie*, 342 F.3d 903, 908-09 (9th Cir. 2003) (mere
8 mention of document's existence insufficient to incorporate contents); *see also Khoja*, 899 F.3d at
9 1007 (documents unnamed in complaint not incorporated by reference).¹⁰

11 Nor do Plaintiffs' claims for relief rely (much less "necessarily" rely) upon the NHL-
12 NHLPA CBA. *See Khoja*, 899 F.3d at 1002. The NHL does not argue otherwise, nor could it, as
13 the Complaint's allegations are not based in any way on the NHL-NHLPA CBA, and the terms of
14 that CBA are therefore not necessary to the Complaint. *See, e.g., id.* at 1004 (blog post cited once
15 and providing factual background not incorporated into complaint because contents were not
16 necessary to establish any element of claims). That Defendants seek to rely on the NHL-NHLPA
17 CBA as the foundation for their non-statutory labor exemption *defense* does not change that result.
18 As the Ninth Circuit has held, if a document "merely creates a defense to the well-pled allegations
19 in the complaint, then that document did not necessarily form the basis of the complaint." *Id.* at
20 1002. Applying this precedent, the court in *Ulloa v. Securitas Security Services USA* refused to
21 consider an unpled CBA and related witness declarations submitted by the defendant on a Rule
22

24 ¹⁰ The NHL's assertion that Plaintiffs' failure to include in their Complaint a passing reference to
25 the NHL that appeared in Plaintiffs' previous SDNY complaint constitutes a "judicial admission"
26 is unsupported by any on-point authority. *See* NHL Mem. 30 n.13. Even if the Court were to
27 deem it proper to consider Plaintiffs' SDNY complaint, that brief prior reference was insufficient
to incorporate the NHL-NHLPA CBA into that complaint either.

1 12(b)(6) motion where the plaintiff's state labor code claims did not rely upon the unpled CBA.
2 No. 23-CV-1752, 2023 WL 8720140, at *2 nn.1-2 (N.D. Cal. Dec. 18, 2023) (citing *Lee v. City of*
3 *Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) & *Khoja*, 899 F.3d at 1002). This Court should
4 likewise refuse to consider the NHL-NHLPA CBA or the Daly declaration.

5 The NHL suggests that the Court may nonetheless consider the NHL-NHLPA CBA
6 because that document is available on the NHL's website. NHL Mem. 4 n.4. But the relevant
7 question raised by Defendants' 12(b)(6) motion is not whether the NHL-NHLPA CBA exists,
8 online or otherwise, but how that CBA should be construed and how it might apply in the specific
9 context of the non-statutory exemption—matters that may not be judicially noticed because they
10 are disputed. *See Khoja*, 899 F.3d at 999-1001 (reversing judicial notice of public records'
11 contents whose meaning was subject to reasonable dispute); *Reina-Rodriguez v. U.S.*, 655 F.3d
12 1182, 1193 (9th Cir. 2011) (no judicial notice where document "is subject to varying
13 interpretations, and there is a reasonable dispute as to what [it] establishes"); *Ulloa*, 2023 WL
14 8720140, at *2 (in response to arguments indistinguishable from Defendant's, refusing to take
15 judicial notice of CBA available online in absence of on-point authority supporting movant's
16 request).¹¹
17
18
19
20

21 ¹¹ The NHL's handful of citations are not to the contrary. NHL Mem. 4 n.4. In *Ly Chhen v.*
22 *Boeing Co.*, No. 18-CV-779, 2018 WL 4103665, at *1 (W.D. Wash. Aug. 29, 2018), and *Pinkert*
23 *v. Schwab Charitable Fund*, 48 F.4th 1051, 1055 n.2 (9th Cir. 2022), the noticed documents were
24 referenced extensively in plaintiffs' complaints. *Ballard v. National Football League Players*
25 *Association*, 123 F. Supp. 3d 1161 (E.D. Mo. 2015), is directly contrary to Ninth Circuit precedent
26 prohibiting consideration at the Rule 12(b)(6) stage of documents relevant only to a defense. *See*
27 *supra* at 41. *Columbare v. Sw. Airlines, Co.*, No. 3:21-CV-297-B-BK, 2023 WL 406439, at *4
(N.D. Tex. Jan. 10, 2023), took judicial notice of an online contract to resolve a choice-of-law
dispute, not to adjudicate the merits of a defense. And *Mirlis v. Greer*, 952 F.3d 51, 63 n.11 (2d
Cir. 2020), permitted judicial notice of blog posts to evaluate the propriety of publicly releasing a
videorecorded deposition, entirely outside the Rule 12(b)(6) context.

1 For this fundamental procedural infirmity alone, the Court should reject the NHL's non-
2 statutory exemption defense.

3 **B. Even if the NHL's collective bargaining agreement were properly considered**
4 **on a motion to dismiss, the labor exemption would not apply.**

5 The NHL contends that Plaintiffs' claim against it is based solely on a provision of the
6 NHL-CHL Agreement that requires Players drafted and signed by NHL teams, but not retained on
7 an NHL roster, to be returned to the Major Junior Clubs from which they were drafted, and that
8 this provision, along with all others contained in the NHL-CHL Agreement, has been incorporated
9 into the NHL-NHLPA CBA so as to be immunized from antitrust liability. *See* NHL Mem. 1-2,
10 12-13, 20, 27-33.

11 As an initial matter, the NHL's mischaracterization of the Complaint dooms its argument.
12 Plaintiffs challenge far more than the single provision of the NHL-CHL Agreement upon which
13 the NHL focuses, including provisions of the NHL-CHL Agreement whereby the NHL agrees (1)
14 to return drafted and *unsigned* Players exclusively to the Major Junior Clubs from which they were
15 drafted (Compl. ¶¶ 270-71; Ex. 1 at 8-9) and (2) to provide funding to the Major Junior Defendants
16 in support of their anticompetitive system, which benefits the NHL by providing it a ready source
17 of top talent at reduced cost. Compl. ¶¶ 266j, 269, 275-79; *e.g.*, Ex. 1 at 4-5 (NHL pays
18 consideration to Major Junior Clubs in return for their consent to NHL's retention of their Players).
19 The NHL's failure to argue that these other challenged restraints are immunized by the non-
20 statutory exemption waives such arguments and requires rejection of the NHL's defense.
21

22 Plaintiffs also challenge a restraint that does not appear anywhere in the NHL-CHL
23 Agreement; the NHL's agreement to restrict its minor league affiliates from competing with the
24 Major Junior Defendants for North American hockey Players under the age of 20. Compl. ¶¶ 272-
25 73. The NHL makes no argument that the non-statutory exemption shields this challenged
26
27

1 restraint. Therefore, even if the NHL-NHLPA CBA *did* incorporate the NHL-CHL Agreement
2 and even if that Agreement's provisions *were* subject to the non-statutory exemption (it does not,
3 and they are not, *see infra*), the exemption would not cloak the NHL in blanket immunity. The
4 Court need go no further and may reject the NHL's non-statutory exemption defense on this basis.

5 **C. The non-statutory labor exemption does not shield the return requirement for**
6 **Players signed but not retained by the NHL, nor any other provision of the**
7 **NHL-CHL Agreement.**

8 Finally, the non-statutory exemption does not shield the single NHL-CHL Agreement
9 provision on which the NHL focuses: the requirement that Players drafted and signed to an NHL
10 contract but *not retained by the NHL* must be returned to the Major Junior Club from which they
11 were drafted. That restraint has no application to players employed in the NHL and it does not
12 restrict entry into the NHL. Rather, like every other provision in the NHL-CHL Agreement
13 challenged as an unlawful restraint of trade, it only applies to Players who have *left* the NHL or
14 who *never entered* it.

15 Application of the non-statutory exemption requires a fact-specific balancing inquiry that
16 weighs the anticompetitive impacts of restraints imposed through collective bargaining against the
17 strength of the union's core bargaining objectives on behalf of the workers it represents. *See, e.g.,*
18 *Connell Constr. Co. v. Plumbers & Steamfitters Loc. Union No. 100*, 421 U.S. 616, 621-26 (1975);
19 *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 661-669 (1965); *Allen Bradley*, 325
20 U.S. at 800-11; THE DEVELOPING LABOR LAW: THE BOARD, THE COURTS, AND THE NATIONAL
21 LABOR RELATIONS ACT, ch. 29 § 29.II.B (John E. Higgins, Jr., ed., 2023). That inquiry has been
22 distilled into three core requirements, adopted by the Ninth Circuit as the "*Mackey test*": a restraint
23 must "(1) ... primarily affect the parties to the agreement and no one else, (2) ... concern[] wages,
24 hours, or conditions of employment that are mandatory subjects of collective bargaining, and (3)
25 ... [result] from bona fide, arm's-length collective bargaining." *Int'l Longshore & Warehouse*
26
27

1 *Union v. ICTSI Or., Inc.*, 863 F.3d 1178, 1190 (9th Cir. 2017) (“*ILWU*”); *see Mackey v. NFL*, 543
2 F.2d 606, 614 (8th Cir. 1976).¹² The restraints challenged in this lawsuit satisfy none of these
3 requirements.

- 4 1. Because the NHLPA does not represent Major Junior League Players, who
5 are not employed by the NHL, the restraints fail to meet the first and second
6 Mackey factors.

7 First, the restraints at issue do not primarily affect the NHL and the professional NHL
8 hockey players represented by the NHLPA, and do not concern the terms and conditions of
9 employment of any NHLPA-represented professional NHL players. Rather, they principally affect
10 Major Junior Players who are rostered and employed by *Major Junior Clubs*, not NHL teams.
11 Because “the policy of the antitrust laws is clearly set against employer-union agreements seeking
12 to prescribe labor standards outside the bargaining unit,” *Pennington*, 381 U.S. at 659, courts
13 uniformly refuse to apply the non-statutory exemption to agreements between a labor organization
14 and an employer or other party with such disproportionate non-party effects. *See, e.g., id.; Connell*,
15 421 U.S. at 619; *William Morris Endeavor Entertainment, LLC v. Writers Guild of America, West*,
16 *Inc.*, 432 F. Supp. 3d 1127, 1137 (C.D. Cal. 2020) (non-statutory exemption inapplicable where
17 challenged agreement “prohibit[ed] actors and directors” who were not bargaining unit members
18 from engaging in certain conduct).

19
20 To be covered by the non-statutory exemption, the NHL would need to establish as a factual
21 matter either that Major Junior Players are within the bargaining unit represented by the NHLPA
22 or that the restraints Defendants impose upon the labor market for developmental league youth
23 hockey Players primarily affect the NHL hockey players represented by the NHLPA. Aside from
24

25 ¹² Although the Eighth Circuit has held that the Supreme Court’s decision in *Brown v. Pro*
26 *Football* overruled *Mackey*, *see Eller v. NFL Players Ass’n*, 731 F.3d 752, 754-55 (8th Cir. 2013),
27 the Ninth Circuit has rejected that reading of *Brown*. *See ILWU*, 863 F.3d at 1194.

1 being wholly inappropriate at this pleadings stage, those showings would be factually impossible
2 to make.

3 Citing the NHL-NHLPA CBA's recognition clause, the NHL erroneously contends that
4 the NHLPA is the exclusive representative entitled to negotiate mandatory terms and conditions
5 of employment not only for current NHL players, but also for Major Junior Players who, despite
6 having signed an NHL contract, were sent back to the Major Junior Leagues pursuant to the NHL-
7 CHL Agreement's mandatory return provision who do *not* play in the NHL as a result. NHL Mem.
8 28. However, the CBA's recognition clause language designating the NHLPA as "the exclusive
9 bargaining representative of all present and future Players *employed as such in the League by the*
10 *Clubs,*" Ex. 4 at 10 (emphasis added), makes clear that the NHLPA is only authorized to represent
11 professional hockey players *currently* employed by the NHL—not, as here, players who were
12 never employed by the NHL, or were initially drafted and signed but then returned to the Major
13 Junior Leagues. Indeed, the NHLPA's Constitution defines its membership as "[a]ll players who
14 are on an NHL club roster," which does *not* include Players who are initially drafted and signed
15 by the NHL but then returned to their Major Junior League employer.¹³

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18 To argue that the non-statutory exemption can apply to restraints primarily affecting
19 Players outside the bargaining unit, the NHL relies on cases involving collectively bargained
20 restrictions on professional sports draft eligibility (e.g., who may be drafted and which teams they
21 may play for). *See* NHL Mem. 20-21. But those cases merely illustrate the longstanding,
22 noncontroversial labor law principle that the terms and conditions for *entering* a bargaining unit
23

24 ¹³ Although the NHLPA Constitution is not before the Court on Defendants' Rule 12(b)(6) motion,
25 *see supra* at 41, if the Court disagrees and takes judicial notice of the NHL-NHLPA CBA,
26 Plaintiffs request that it also take judicial notice of the NHLPA Constitution, which appears at
27 https://ipmall.law.unh.edu/sites/default/files/hosted_resources/SportsEntLaw_Institute/League%20Constitutions%20&%20Bylaws/nhlpa_constitution.pdf.

1 (i.e., becoming employed within the unit) are within the mandatory subjects a union is authorized
2 to negotiate on behalf of its membership, even if the resulting provisions also affect some
3 individuals outside the bargaining unit. *See, e.g., Claret*, 369 F.3d at 139 (likening NFL eligibility
4 rules to “circumstances under which an employer may ... refuse to hire an employee,” a traditional
5 “mandatory bargaining subject” (alteration in original)); *Nat’l Basketball Ass’n v. Williams*, 45
6 F.3d 684, 685-86 (2d Cir. 1995) (describing NBA basketball teams as comprising a multi-
7 employer bargaining unit for which player draft sets terms of entry); *Wood v. Nat’l Basketball*
8 *Ass’n*, 809 F.2d 954, 960 (2d Cir. 1987) (comparing NBA draft to “exclusive referral of workers
9 by a hiring hall”). Provisions that restrict or define the conditions of *entry* into a bargaining unit
10 are a far cry from provisions that primarily affect the terms and conditions of non-party,
11 unrepresented workers who are employed entirely *outside* the bargaining unit, like those at issue
12 here.¹⁴

14 Because the anticompetitive restraints that Plaintiffs challenge primarily affect the Major
15 Junior Leagues and the Players they employ, not the terms and conditions of employment of the
16 parties to the NHL-NHLPA CBA (the NHL and the NHLPA’s NHL hockey player members), the
17 non-statutory exemption does not apply.

22 ¹⁴ Similarly, the reserve system and transfer payment cases the NHL cites address rules governing
23 *intra-league* transfers between employers within a multi-employer professional sports league
24 bargaining unit, not *inter-league* transfers between unionized (NHL teams) and non-unionized
25 employers (Major Junior Clubs). *See Silverman v. Major League Baseball Player Rels. Comm.,*
26 *Inc.*, 67 F.3d 1054, 1061 (2d Cir. 1995) (addressing free agency and reserve system provisions
27 governing hiring of Major League Baseball players); *McCourt v. California Sports, Inc.*, 600 F.2d
1193 (6th Cir. 1979) (addressing reserve system requirements applying to NHL players). They,
too, are inapposite.

- 1 2. Defendants cannot establish that the challenged restraints resulted from
2 bona fide arm's-length bargaining, so the third *Mackey* factor also is not
3 satisfied.

4 Initially, the NHL cannot establish as a matter of law that the challenged restraints were
5 agreed to by the NHLPA, let alone that they resulted from “bona fide, arms-length collective
6 bargaining.” *ILWU*, 863 F.3d at 1190. Setting aside that this question of fact is wholly
7 inappropriate on this motion to dismiss, the NHL’s assertion that the NHL-CHL Agreement was
8 incorporated in its entirety into the NHL-NHLPA CBA and ratified by the NHLPA is highly
9 implausible.¹⁵ The 2005 letter that purportedly effects such incorporation, *see* NHL Mem. 5
10 (citing Ex. 6), merely provides: (1) *if* the NHL considers modifying any of the NHL-CHL
11 Agreement provisions *specifically cited* in the NHL-NHLPA CBA, and (2) *if* the NHL’s proposed
12 modification of those cited provisions would affect the terms and conditions of employment of the
13 NHLPA’s bargaining unit members (i.e., professional NHL hockey players), then (3) the NHL
14 would be required to bargain and reach agreement with the NHLPA before implementing any of
15 the proposed modifications. Ex. 6. That language does not come close to incorporating the entire
16 NHL-CHL Agreement into the CBA. *See M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427,
17 435 (2015) (CBAs are interpreted according to ordinary principles of contract law).

18 The NHL also erroneously argues that Articles 8.7 and 9.1(d)(iv) of the CBA set forth the
19 Major Junior return requirement for Players signed but not retained on an NHL roster. But Article
20

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23 ¹⁵ “[W]hat the parties intended by an ambiguous contract is a factual determination,” *United States*
24 *v. Plummer*, 941 F.2d 799, 803 (9th Cir. 1991), and thus “where the language ‘leaves doubt as to
25 the parties’ intent,’ [any] motion to dismiss must be denied.” *Williams v. Apple, Inc.*, 449 F. Supp.
26 3d 892, 908 (N.D. Cal. 2020) (quoting *Monaco v. Bear Stearns Residential Mortg. Corp.*, 554 F.
27 Supp. 2d 1034, 1040 (C.D. Cal. 2008) (quoting *Consul Ltd. v. Solide Enteres., Inc.*, 802 F.2d 1143,
 1149 (9th Cir. 1986))); *cf. Bedrosian v. Tenet Healthcare Corp.*, 208 F.3d 220 (9th Cir. 2000)
 (“Resolution of contractual claims on a motion to dismiss is proper if the terms of the contract are
 unambiguous.”).

1 8.7 (which applies to *all* 18- and 19-year-old draftees, including those drafted from European
2 leagues and other *non*-Major Junior League Clubs) applies only if an NHL club wishes to transfer
3 (“Loan”) a drafted and signed player to a non-NHL club; it does not *require* reassignment of any
4 such player to the Club from which he was drafted. *See* Ex. 4 at 21. Plaintiffs’ Complaint, by
5 contrast, challenges the far more pernicious provision in the NHL-CHL Agreement through which
6 Defendants agreed that any 18-19 year old Player drafted from a Major Junior Club but not retained
7 by the drafting NHL team for more than 10 regular-season games *must be returned* to the Player’s
8 former Major Junior Club—a restriction that applies *only* to draftees from Major Junior Hockey
9 and not to any draftees from any other leagues. *See* Compl. ¶¶ 271-72, 78-79; Ex. 1 at 5-6.¹⁶ The
10 NHL also ignores that the NHL-CHL Agreement’s restrictive reassignment provisions apply to
11 *unsigned* as well as signed Major Junior draftees. *See* Ex. 1 at 5-6 (return requirement for signed
12 Players), 8 (same for unsigned Players). So, even if Article 8.7 *did* actually set forth the challenged
13 restrictive return requirement for signed but non-retained draftees, it could not immunize from
14 antitrust scrutiny the return requirement for *unsigned* Major Junior draftees.
15

16
17 Article 9.1(d)(iv) does not set forth the mandatory return provision Plaintiffs challenge
18 either. Contrary to the NHL’s selective quotation, Article 9.1(d)(iv) merely “confirm[s] and
19 affirm[s]” so-called “return dates” to the Major Juniors and the minor leagues. *See* Ex. 4 at 24.
20 Plaintiffs do not challenge “return dates” (whatever those may be), and the NHL-CHL
21

22 ¹⁶ Even if Article 8.7 were coterminous with the NHL-CHL Agreement’s return provision, that
23 provision would not be the actual cause of the anticompetitive effects at issue here. *Cf. Nat’l*
24 *Hockey League Players Ass’n v. Plymouth Whalers Hockey Club*, 419 F.3d 462, 474 (6th Cir.
25 2005) (non-statutory labor exemption applies only where “injury complained of [was] actually”
26 caused by CBA). The “actual cause” would include the other restraints challenged in this lawsuit,
27 without which a Player offered back to his Major Junior Club by the NHL could, like players
drafted from European hockey leagues, seek to break his contract with that Major Junior Club and
sign with a team in a competing developmental league, such as the AHL or ECHL. *See* Compl.
¶¶ 278-79.

1 Agreement's mandatory return provision that Plaintiffs *do* challenge contains nothing resembling
2 them. *See* Ex. 1 at 5-6. The NHL's implausible construction of this ambiguous language cannot
3 be credited on its motion to dismiss. *See Williams*, 449 F. Supp. 3d at 908.

4 Finally, even if the NHL-CHL Agreement's restraints were somehow ratified by the NHL-
5 NHLPA CBA, Defendants cannot establish as a matter of law that they resulted from "bona fide,
6 arms-length bargaining." *ILWU*, 863 F.3d at 1190. Under Ninth Circuit precedent, inclusion of a
7 non-bargaining employer (here, the Major Junior Defendants) in a challenged agreement signals
8 "that the conduct is not anchored in the collective-bargaining process and should instead be subject
9 to scrutiny by antitrust laws designed to prevent unreasonable restraints." *California ex rel. Harris*
10 *v. Safeway, Inc.*, 651 F.3d 1118, 1131 (9th Cir. 2011); *see also Reed v. Advocate Health Care*, No.
11 06 C 3337, 2007 WL 967932, at *3-5 (N.D. Ill. Mar. 28, 2007) (non-statutory exemption did not
12 shield employer from antitrust liability for wage-fixing conspiracy with competitors that occurred
13 outside of collective bargaining relationship with union); *Home Box Off., Inc. v. Directors Guild*
14 *of Am., Inc.*, 531 F. Supp. 578, 590 (S.D.N.Y. 1982) ("crucial determinant" for non-statutory
15 exemption is agreement's "relative impact on the product market and the interests of union
16 members"), *aff'd*, 708 F.2d 95 (2d Cir. 1983) (quoting *Jewel Tea*, 381 U.S. at 690 n.5).

19 Rather than serving a legitimate interest of the NHL player bargaining unit or facilitating
20 collective bargaining between the NHL and NHLPA, the NHL-CHL Agreement's challenged
21 restraints principally serve the interests of the NHL and the non-party Major Junior Defendants by
22 artificially depressing compensation in the separate labor market for competitive youth hockey.
23 As in *Mackey*, the NHL cannot demonstrate any benefit inuring to the NHLPA or its members
24 from the NHL-CHL Agreement's terms, nor that any term of that Agreement has ever been
25 modified because of bargaining with the NHLPA. *See* 543 F.2d at 616. Absent such a showing,
26
27

1 Defendants' anticompetitive restraints are nothing more than an agreement between two groups of
2 employers that, even if they had been later accepted by the NHLPA, could not be considered the
3 product of bona fide, arms-length bargaining with that union. *See id.* (union acceptance of status
4 quo Rozelle Rule in CBA not result of bona fide, arms-length bargaining where Rule did not
5 benefit union and was promulgated independently by NFL employer group); *cf. Reed*, 2007 WL
6 at *4-5 (non-statutory exemption inapplicable to employers' wage-fixing agreement absent
7 certified multi-employer bargaining unit or other evidence of quid-pro-quo bargaining over
8 agreement with labor representative of single unionized employer).¹⁷

10 CONCLUSION

11 For the reasons set forth above, Defendants' motions should be denied.

12 Dated: March 6, 2025

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18 I certify that this memorandum contains 16,797 words, in compliance with the Court's Order of
19 February 28, 2025, and the Local Civil Rules.

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23 ¹⁷ Even if the hearsay email exchange between Daly and the NHLPA's general counsel were
24 properly considered at this pleadings stage, the NHLPA GC's email providing "no objection to the
25 finalization and execution of the CHL Agreement" would hardly provide evidence of bona-fide,
26 arm's length dealing regarding any term of the NHL-CHL Agreement. As explained above, the
27 NHLPA's non-objection could signify, at most, the absence of any changes to that Agreement that
affected the terms and conditions of NHL players' employment and/or over which the union
demanded bargaining. *See* Ex. 6.

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